United States Court of Appeals

for the Second Circuit

APPENDIX

In addition to that, am I not right that the corporation is to pay $270,000 to reflect any increase or decrease in the value -- no, 270 adjusted to reflect change in the stock exchange fee. So that really about a million was required.

A I don't know where the $750,000 was going to come from.

Q Now, you testified that at this time and until December the magic name Aixala had never been mentioned to you, is that right?

MR. GRUTMAN: I object to the "magic."

THE COURT: Strike the "magic." Go ahead.

A Yes. That's what I testified.

Q All right. So, therefore, is it the implication of your testimony that as far as you know Aixala was not the resource upon which Exhibit H was predicated?

A As far as I know, that is what I testified. He was not.

Q Now, just about this time you became the chief operating officer of Newburger Loeb, isn't that right?

A There was an attempt to name me the chief operating officer of Newburger Loeb and that never fully succeeded.

Q Without fencing, you were de facto the chief operating officer of Newburger Loeb for a number of months; right or wrong?

A It is difficult to answer that question that way. There is no concept of a chief operating officer of a partnership.

MR. GLATZER: Do you mean at about this time?

MR. SHAW: I assume he means in the fall of 1970.

THE COURT: We are talking about September, October, November of 1970.

THE WITNESS: If it is that period of time, in September or October I was a consultant. In November there was an attempt to make me the chief operating officer of Newburger Loeb.

Q Mr. Risher, I'll ask you once again before going to your deposition. Isn't it fair to say that throughout December and January at least, with or without titles, you and Muh were de facto the operating managers of the partnership?

A The purpose of trying to name me the chief operating officer --

THE COURT: No, Mr. Risher. Can you answer that? Not purpose. Just were you or weren't you?

THE WITNESS: Mr. Muh and I played a key role in every -- nearly every operating decision made by Newburger Loeb.

Q You were really running the business but clearing consent of partners for the most important decisions, isn't that right?

A Yes, sir.

Q And so you were, in a practical sense, the de facto operating head of business, is that right?

MR. GRUTMAN: I object to that as argumentative in light of the prior answer.

THE COURT: Yes. Sustained.

MR. MANDEL: All right.

Q During what period would you say you occupied this role?

A From November and until February 11, 1971.

Q And in practice you would make almost all of the important decisions and, having made a decision, make a recommendation to one of the general partners in order to get approval, is that not right?

A In November my role became a different one where that was not so necessary. In November, by that time the basketball team was sold, One New York Plaza was gone, the clearing agreement had been entered into and the securities had been transferred. So my role then changed, in November, to one of the problems of capital withdrawal and the problems of restructuring the company.

So the number of operating decisions that I got involved in during that period of time declined substantially.

Q Well, just to name a few, you were consulted when

it came to the Buckley settlement, right?

A Yes, sir.

Q And you were consulted -- let me take it another way.

When it came to the Buckley question, who consulted you about the settlement?

A Mr. Berkowitz and Mr. Persky.

Q And when did they consult you?

A My best way of reflecting that is with the memoranda that were discussed this morning, which is in the period around December 2nd, December 9, 1970.

Q And that settlement came to you because you were acting as operating head of the company; this question was brought to you by the inside counsel and the outside counsel, right?

MR. GRUTMAN: Objection. He never said he was the chief operating officer.

MR. MANDEL: De facto.

MR. GRUTMAN: He never said that either.

THE COURT: He said he was running the business.

Q All right. Because you were running the business.

MR. SHAW: He was doing what he was doing.

THE COURT: He was running the business. That's what he said.

Q Because you were running the business, right?

A Yes, sir.

Q And you were busy with restructuring the business, you said, at that time, which really means working out a deal so that you and your friends could acquire the business.

A Yes.

Q So that you were in a dual position: you were running the business for the partnership, but the partnership needed some changing and you were quite active in working on a change which would bring you into a position of ownership and control, is that right?

A Yes.

Q And to some extent, I suppose you will agree with me, those aims of yours or positions involved some conflict of interest --

MR. SHAW: Objection. That is a legal conclusion in this case.

THE COURT: Yes. As phrased, I'll sustain that.

Q All right. To some extent your interests and those of various partners might be at variance.

A The more successfully the partnership was run, the better the asset would be for the corporation to acquire.

Q If it were run too successfully, you might have to pay more for it or if it were too successful you might not be able

to acquire it at all, isn't that correct?

A During that period of time there was never that danger.

Q I think that is probably true.

Now getting back to the Buckley settlement, both Berkowitz and Persky came to you, right?

A Yes, sir.

Q And this was in December, right, of 1970?

A Yes, sir.

Q And you had directed that the Buckley file be turned over to Persky's firm, right?

A I don't recall having done that.

Q Who made that decision?

A I don't know.

Q Did Berkowitz?

A I just don't know.

Q Now, by December it was clear, was it not, that the proposed acquiring group included you and included Berkowitz, and you and Berkowitz and the other acquirers were being represented by Persky, is that right?

A Certainly by late December that was the case. Yes, that's true. That's true for all of December.

Q And for all of December the group also included Kayne, is that right?

A No, sir.

Q At what point was Kayne out?

A Kayne was out at the time of the December 10th meeting. There is a reference to Kayne in Mr. Silverman's notes. The reference is that Dr. Phillip Shulman said something about Kayne's being involved and I, as I recall, did nothing and walked away from the comment. As I have testified, I did not want Mr. Kayne to be a equity owner.

Mr. Kayne's position and the successful assertion of it occurred sometime after December 10th, probably sometime after December 17th, because it began to open up for him after the phone call to the New York Stock Exchange.

So sometime after December 17th.

Q Now, you started out being brought into the situation by Kayne and you and Kayne were working together during much of the time. And originally Kayne had the upper hand and you weren't as important as he was in the situation.

A That's correct.

Q And at some point you decided -- we won't go into the reasons just now, but you decided -- you did not want Kayne in the situation and for awhile he was out, right?

A It didn't work that way.

Q All right. Tell me how it did work.

A Kayne decided to resign as the managing partner, for reasons that have been stated here. It is my belief that he

asked me whether I wanted to try to do something in hopes that I could continue to keep the partnership alive through the end of the year so that, if he resigned as a partner, he would be able to have a defense against leasehold obligations, that sort of thing.

And at that point the separate proposal and the things that came forth from that began to be put together, but in this case by me.

Q Are you saying that from the time Kayne left, which was -- when?

A In November.

Q Middle of November?

A Sometime in November. I don't recall precisely.

Q From the time Kayne left until sometime after December 10th, Kayne was out of the picture.

A Yes, sir.

Q And he wanted to be out?

A I don't know whether he wanted to be or not, but he was out.

Q As far as you were concerned.

A As far as I was concerned.

Q Did you tell him he was out?

A There was a clear understanding that he was out.

Q When he was leaving?

A Yes.

Q Now, isn't it the fact that when Kayne found out yo tried to push him out of the picture, he raised a row and Muh stood by him and you and Kayne have been unfriendly ever since?

A Sorry, but it did not happen that way.

Q No. Now, by December 17th at least, Kayne was back in the picture fully, right?

A No, not by December 17th. Sometime after December 17th.

Q Have a look at P-97 -- it has a different number here -- and see if that refreshes your recollection (handing).

MR. SHAW: Is that in evidence?

MR. MANDEL: Yes.

MR. ROTHMAN: P-97 is in evidence. Double I is in evidence?

MR. MANDEL: We have got it in twice.

A Okay, yes, it does. It is dated December 17th and Mr. Kayne is in there as an equal shareholder.

Q And it refers to a telephone conversation of "yesterday," so we are back to December 16th and, in fact, it takes time to write and prepare these papers so we are really back before December 16th, are we not?

A The problem is the date of the phone call to the New

York Stock Exchange, and I cannot be precise about the date of the phone call to the New York Stock Exchange.

Q Well, the letter is dated December 17th, right?

A Right.

Q And it says the phone call was "yesterday."

A That's a different phone call.

C A different phone call from what?

MR. GRUTMAN: From the one he is referring to.

THE COURT: The stock exchange phone call.

A The stock exchange phone call I had been referring to is the one that I think Mr. Bialkin placed to the stock exchange, although exactly when I don't know.

Q I'm talking about Exhibit II, which is a letter to Mr. Dilger dated December 17th in which Robert L. Newburger submits a plan to the stock exchange pursuant to his conversation with Dilger of yesterday.

So Newburger's conversation with Dilger must have been December 16th, right?

A But that's not the conversation that I have used as a reference point of trying to determine when the position available for Mr. Kayne began to look to be in the picture.

Q Well, what is your present best date now for the reference point of your Bialkin conversation?

A I don't know. It was after the December 10th meeting

and it was at a meeting that occurred when the subordinated lenders met with limited partners and the subordinated lenders heard about the problems of Newburger Loeb and capital withdrawal for the first time. So it is now fixed that that meeting did not occur on December 17th and I don't think anyone has notes or anything of that meeting. Maybe Mr. Silverman did not attend.

And it apparently occurred, that meeting occurred, prior to the 17th. The material, the plan that is attached there, was written by me and it was written late at night on December 16th. So it didn't move it back to the 15th, because I remember late at night writing that plan and Mr. Newburger sent it over on the morning of the 17th.

Q And that was the pattern at that time, wasn't it? You would write the plan and a partner would send it out. You wrote up the plan and you had Newburger send it to Dilger. Actually, you had the conversation with Dilger. Was it you or --

MR. SHAW: I don't think there has been an answer to a question. I think there were just a series of statements by Mr. Mandel.

MR. MANDEL: All right.

A Who had the conversation with Dilger?

I think I did. I think I did.

Q I think so, too. But Robert Newburger sent it out and said, "Pursuant to our telephone conversation."

A The New York Stock Exchange had a funny attitude. If I had sent it, they might have sent it back and said, "This is not acceptable. It must come from an official in the firm."

Q Well --

A The plan itself carefully discloses the reorganization with my name and others prominently displayed. I don't think anyone was misled by that.

Q I am now getting back to your conversation with Berkowitz and Persky about the Buckley settlement and I would like you to tell me in some detail who spoke to you first and what he said. Was it Berkowitz first or Persky first?

A I don't remember.

Q Now, when you sent a memorandum, which partner got the memorandum?

A Robert Newburger.

Q Asking him to approve the settlement. Did you tell him that part of the settlement was an assignment of a claim against Gross and Company?

A The memorandum was only a few lines and that was not included. No.

Q Didn't you think that was an important item?

A The importance of it was lost on me at the time.

Q Now, Persky told you about that settlement he wanted to make before he did it, didn't he?

A He told me about the settlement before he did it?

Q Yes.

A Yes.

Q And he told you he was taking an assignment of a claim against Gross and Company, didn't he?

A I think --

Q You know he did.

A No, Mr. Mandel, that is not my testimony. I think that Mr. Persky told me about the dollars involved in the settlement and after the settlement called me and said that he had gotten the assignment and that it was an idea that had come to him later on and he thought it was a good idea and he had done it.

Q And what did you say?

A "Okay."

Q That's all?

A That's all I recall.

Q Did you understand the value of the assignment at that time?

A No.

Q When did you first understand the value of the assignment?

A I'm not sure what you mean by "value."

Q Well, when did you first understand the usefulness of the assignment?

A I am not sure I understand your "usefulness" term.

Q All right. I'll try it another way.

You testified on direct that you thought that an assignment was worth a quarter of a million dollars, right?

MR. GRUTMAN: When did he testify to that, Judge?

MR. SHAW: Direct examination in this case.

MR. MANDEL: He said he authorized the bringing of the action herein because he thought it was a good claim.

MR. GRUTMAN: That is a quite different thing.

Q Is that right?

MR. GRUTMAN: That, your Honor, is argumentative.

MR. SHAW: There is no such testimony.

THE COURT: Let's see if we get there.

MR. MANDEL: All right.

Q Didn't Persky tell you, when he told you that he got the assignment, that he did a pretty good thing?

A Yes.

Q He was proud of himself, wasn't he?

A Yes.

Q It was a damn good idea as far as he was concerned,

right?

A Yes.

Q And he explained precisely why.

A I don't recall any precise explanation.

Q Do you recall an imprecise explanation?

A He thought it was a good idea and he was glad that he had done it and he thought that it was something to his credit to have done it.

Q And you didn't ask him what was so damn good about it?

A No. I understood that a lawsuit against Gross and Company could be asserted because of the assignment. I understood that.

Q And the company was desperate for money, right?

A Yes, sir.

Q And there was a quantitive indication attached to that assignment, was there not?

A Yes, sir.

Q How much was it?

A Approximately $200,000.

Q And you knew that immediately, right?

A I had a general understanding of the numbers. At that point in time I had never looked at a Buckley account or seen how large the debit balance actually was.

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Q You authorized the settlement of a claim against Buckley which included the taking of an assignment of a claim Buckley had made against the company, right?

A Yes, sir.

Q And when you looked into the matter to authorize the settlement, you had some idea of what Buckley was claiming against Newburger Loeb, right?

A No, sir.

Q You didn't have an idea.

A No, sir.

Q So you authorized the settlement without consideration of what Buckley's claim was, is that right?

A I relied on Mr. Persky and I asked Mr. Persky what he thought we could recover. And he said, "I think $50,000 is all we can get."

And I said, "Get $50,000."

Q Weren't you worried about the claim Buckley had against Newburger Loeb for half a million dollars or so?

A I'm not sure I was even aware of it.

Q You mean Berkowitz didn't tell you that Buckley had a serious claim against Newburger Loeb?

A Berkowitz ultimately told me that, yes.

Q He told you that before the settlement, right?

A I think so, yes. Yes.

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Q And Persky, what did he tell you before the settlement about Buckley's claim against Newburger Loeb?

A I don't recall any discussions about Buckley's claim against Newburger Loeb with Persky.

Q Persky was the attorney handling the matter, right?

A Yes.

Q He was the one you entrusted with the settlement, right?

A Yes.

Q He was protecting the company, right?

A Yes.

Q He was to get money for the company?

A Yes.

Q If he could?

A Yes.

Q But he was to protect the company against serious claims against it, right?

A Yes.

Q But he didn't tell you about Buckley's serious claim against Newburger Loeb?

A I have no recollection of it.

Q Now, $50,000 was a lot of money if Newburger Loeb had to pay it out, right? Excuse me. I mean 50,000 was a lot for Newburger to get at that time.

A I was very distressed at the time that it was such a small portion of the total amount that had been lost. I was very troubled by that.

Q But you were still glad, and you testified on direct, to get the cash; you wanted to get everything in.

A Absolutely.

Q $50,000 was an important sum, right?

A Yes, sir.

Q How about 250 or 500,000 if the company had to pay it out? Didn't that worry you?

A I did not have a sufficient imprint of that thought in my mind to be worried about it.

Q What you are saying, therefore, Mr. Risher, is that Persky and Berkowitz never said to you, "Mr. Risher, we have a dangerous claim facing us in this Buckley situation." They never said anything like that?

A No, sir.

Q They never said to you, before they made the settlement, "By God" --

MR. GRUTMAN: Now, your Honor, Mr. Mandel is having a little this afternoon without a jury.

THE COURT: He never said to you what?

MR. GRUTMAN: When they were here, he was bland and limp. Now he is --

THE COURT: Go ahead, Mr. Mandel. Finish your question. They never said to you what.

Q They never said to you, "By God, this is a claim that can break the company. There have been 1100 transactions in this registered rep's handling of the account and the eminent firm of Webster, Sheffield, Fleischmann and is handling it and, by God, they mean business." You don't recall anything like that, do you?

A No, sir.

Q That would have made an imprint, would it not?

A Yes, as you have.

Q Yes. Now, when was the first time that -- I'll strike that.

At all times in your handling of the Buckley settlement you knew that it was only a question of how much money you would get from Buckley and his father, right?

MR. GRUTMAN: I object to the form of the question, your Honor.

THE COURT: As far as he was aware that was the only question, all right?

MR. GRUTMAN: All right. Fine.

A That was the paramount question, yes, sir.

Q Now, when did Persky fully explain to you that the Buckley claim could be used in negotiations with Charlie Gross?

A My next contact with the Buckley claim --

Q I'm not asking you about a next contact. When did Persky first explain to you how the Buckley claim could be used against Charlie Gross?

MR. SHAW: I object on the ground of form. That hasn't been established that it was ever done.

MR. MANDEL: The question is when. I think we have evidence that it was done.

THE COURT: Was that ever done? Was it ever explained to you how this could be used in negotiating with Charles Gross?

THE WITNESS: It was clear to me how it could be used when Mr. Persky drew up the complaint and handed it to you or a representative of Mr. Gross in a meeting.

Q On February 5th?

A I think that's the one, yes.

Q It was clear to you long before then, was it not?

A No, not really.

Q Certainly it was clear to you on January 15th, wasn't it?

A No.

Q No? You were present in my office, weren't you?

A Yes.

Q With Muh and Persky and myself and Gross? Don't you

recall Persky telling Gross about the seriousness of the Buckley claim against him?

A I have no recollection of that. At the moment most of my concentration had been on the balance sheet and the condition of the company and I was a little bit at sea that you didn't even seem to want to look at the numbers.

Q Never mind that. I'm talking about the counterclaims. You were there and you heard them, right?

A But the Buckley claim is not the only counterclaim that had been mentioned about Mr. Gross.

Q But he did mention the Buckley claim amongst the others.

A I don't remember him mentioning the Buckley claim. I remember him saying counterclaims and implying litigation, but precisely as to what I did not pay sufficient attention.

Q Do you say he didn't mention the Buckley counterclaim?

A No, sir, I did not say that.

Q You say you don't recall one way or the other?

A I don't recall.

Q Without recalling specifically, you knew by January 15th that counterclaims and the suggestion of counterclaims, I won't say threats, could and would be used in negotiations with Gross, right?

A I know that people were talking about counterclaims against Mr. Gross and, yes, they would be used in negotiations with him.

Q I don't mean --

THE COURT: He has answered that: yes, they would be used.

Q But not by people. By you and your lawyer Persky, right?

A Yes. We were the vehicle.

Q And --

A The corporation was the vehicle.

Q On January 15th the partnership was the vehicle, too, because the corporation owned nothing, right?

A There had been an agreement December 31st and it was in everyone's mind that the corporation was going ahead to formation at January 15th.

Q Will you answer my question, please?

The corporation owned nothing on January 15th.

A That's correct.

Q And there was no binding agreement but merely a preliminary agreement on December 30th or 31st, right?

A That's correct.

Q So that on January 15th the Buckley counterclaim and all the other counterclaims were owned by the partnership,

right?

A That's correct.

Q Now, you and Persky and Muh were in my office to try to make your deal go through so that you could acquire the business, right?

A Yes, sir.

Q And Persky had informed everybody by that date that in these negotiations he would be representing the acquirers and not the partnership, right?

A I think so, yes.

Q Nevertheless, on January 15th you and Persky were using partnership claims in order to try to persuade Gross that it was in his interest to go along with the proposed deal.

MR. GRUTMAN: That is objected to. That is argumentative because the whole deal was premised upon the transfer of the partnership assets to the corporation.

THE COURT: No. Overruled.

You may answer.

A Yes, I suppose you may look at it that way.

Q Did you have the authority of any partner to do that?

A No, sir.

Q Now, you say that you first understood the usefulness and value of the Buckley claim at the meeting of February 5th,

when Persky handed around a federal complaint?

MR. GRUTMAN: Objection to the form of that. It was a draft. It had not been served and can't be so characterized.

THE COURT: A piece of paper denominated in this trial Exhibit blank. All right?

MR. MANDEL: All right.

Q Do we know what Exhibit blank we are talking about, Mr. Risher? Are we on the same wave length?

A Yes.

THE COURT: All right.

Q And you say that's when you became familiar with the value --

MR. ROTHMAN: Exhibit X.

MR. MANDEL: Appropriately titled.

Q That's when you became familiar with the value and the usefulness of that counterclaim against Gross.

A Yes.

THE COURT: Mr. Mandel?

MR. MANDEL: Two more questions and then we'll all beat the traffic and all of my indignation is feigned.

Q Now, that complaint was drawn in the name of the partnership, right?

MR. GRUTMAN: That's already in the record, your Honor.

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THE COURT: Yes, that's right.

A I don't know. I didn't see it.

THE COURT: It is. Go ahead.

Q You didn't see it.

A Right.

Q But nevertheless somehow, not seeing it, you became aware of the value of the claim through the existence of the paper.

A Sure. I could hear about it.

Q Who did you hear talk about it?

A Mr. Persky, when he delivered it that day.

Q Who did he deliver it to?

A I don't recall.

Q What did he say?

A Something to the effect of, "Here is a complaint we have drawn against Gross and Company involving the Buckley matter, and I have written it down, put it in this form so that you can see that it is real." That is my recollection of the substance of what he said.

Q And the context --

MR. GRUTMAN: That is the tenth question since Mr. Mandel promised just two.

MR. MANDEL: Just be patient for a minute.

Q And the content of that statement by Persky was

clearly, "It will be in your best interest to go along with this deal and not have this complaint served upon you."

MR. GRUTMAN: That is objected to, your Honor.

THE COURT: Yes. Sustained.

MR. MANDEL: This is the time to stop.

THE COURT: All right. Goodnight. Ten o'clock on Monday.

(Adjourned to Monday, July 21, 1975, at 10:00 a.m.)

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Newburger, Loeb & Company, Inc.

v. 71 Civ. 685

Charles Gross, Mabel Bleich and Gross & Company

New York, New York

July 21, 1975
10:30 a.m.

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(Trial resumed.)

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MR. SILFEN: Your Honor, Mr. Muh is here today because is father's operation is postponed to Wednesday. I just wanted to mention that.

THE COURT: Good.

P A U L D. R I S H E R, resumed.

MR. SHAW: Your Honor, Mr. Risher advises me this morning that he made a mathematical error in his testimony with respect to his --

MR. MANDEL: I would like to hear this, Mr. Shaw, if you don't mind.

MR. SHAW: I am saying it as loud as I can.

He made a mathematical error with respect to his testimony with respect to the computation of the amount of the capital account of Bleich and Donoghue as of

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December 31, 1970. He testified that the figure was around $104,000. He tells me that the figure was in fact $115,413.38.

THE COURT: This is after taking that $400,000 deficit in the general partners' capital, subtracting that from the total limited partners, and then divided pro rata?

MR. SHAW: Correct, your Honor.

THE COURT: I see.

All right.

THE WITNESS: I approximated as I sat here on Friday, and I got to a calculator on the weekend.

THE COURT: All right.

CROSS EXAMINATION (Continued)

BY MR. MANDEL:

THE WITNESS: If you want it now I also have the legal fees on the Gross matter.

THE COURT: Mr. Mandel, Mr. Risher says that he has the legal fees.

THE WITNESS: I have to explain those numbers.

THE COURT: Why don't I let Mr. Risher explain what it is and we will mark that strument for identification.

MR. MANDEL: Shall I start with that or should I let Mr. Shaw put that question to him, your Honor?

MR. SHAW: I don't think there is any need for that, your Honor. Mr. Risher testified last Friday that he was not clear about the legal fee and he was going to go and get some records with respect to it. It is not in the same category as a situation where he has advised me that his testimony was inaccurate with respect to the numbers.

TEH COURT: What is this a legal fee for, and what is the amount of the money, so I get it straight?

THE WITNESS: In the period from May 29, 1971 through January 25, 1974, Newburger, Loeb paid to Finley, Kumble an amount of $79,431.08 for fees in the Charles Gross matter. There is billed but unpaid an amount of $16,869.58 also. The total of those two is $96,300.66.

THE COURT: Go ahead.

BY MR. MANDEL:

Q Mr. Risher, do you remember Herbert Roth testifying on a motion here that there was billed an unpaid $40,000 to Finley, Kumble in connection with this matter? I have reference to the motion of Finley, Kumble to be released as counsel for Newburger, Loeb & Co., Inc. in this case.

Do you recall that?

A Yes, I do.

Q Mr. Roth was in error?

A I don't know what his reference point was.

Q Your reference point is the bills, is that correct?

MR. GRUTMAN: No, thatis objected to. It is teh bills that he's referred to, your Honor. He said specifically allocable to the Charles Gross matter, and I think Mr. Roth's testimony was to the overall indebtedness to Finley, Kumble which may have been beyond the Charles Gross matter.

MR. MANDEL: That is not my recollection.

MR. GRUTMAN: Whether it is his or mine, I don't think that that's the test.

Q You say you started with May of 1971. This action was started before then. Were any legal fees paid to Finley, Kumble or billed by Finley, Kumble in connection with the instant action prior to May?

A I don't think so.

Q What effort did you make to ascertain the facts?

A I have a problem when we get into these areas, Mr. Mandel, and the problem is this: Newburger, Loeb does not have any full-time employees any longer. The files and records are voluminous and unfortunately, because of the circumstances that have surrounded Newburger, Loeb

and the Chapter XI proceeding and sale of file cabinets and so on, files are not well organized; and whenever questions like this come up, I have to personally dig into them, pull out whatever I can find, and make the best of it.

It is difficult for me to bring you to the last penny analyzed numbers, and I can only apologize for that.

Q My question is what efforts did you make?

A I went to my office, I pulled out the files that had been prepared for me at the time that Finley, Kumble was making application to withdraw from the case, and it was very relevant then that I be looking at the fees that had been paid to them and so on.

It was to that file that I went and that I pulled the information that I have here. Now I assume it to be complete and correct. There is the possibility that it is not complete, and that Finley, Kumble's records show as billed but unpaid a different amount from what I have shown here, and if so I can only apologize for that error. I have no alternative.

Q You did not mention in connection with the corporation's legal fees in this matter, fees paid in connection with the withdrawal of Finley, Kumble and after

the witndrawal of Finley, Kumble. Were any such fees paid?

A At the time that they were making application to withdraw, I had told Finley, Kumble that I could pay them $5,000 a month, and at least one and maybe two or three such payments did get made.

Now, allocation of that could have been not only to the Gross matter but to other matters as well; so that perhaps is a partial answer to the question that you have just raised, but subsequent to Finley, Kumble's application for withdrawal, I made -- or at the time of their application for withdrawal, I made one payment, and that was at the Judge's direction, and that payment was made in subsequent -- after that no further payments have been made to Finley, Kumble.

Q How about other attorneys?

MR. SHAW: Objection, your Honor.

MR. MANDEL: Your Honor, they have introduced the costs to the corporation of this up to a certain point.

MR. SHAW: Only for one purpose, your Honor, and that is the alleged existence of a conspiracy between Newburger, Loeb and Finley, Kumble and as to whether there was a belief upon their part that they possessed a meritorious cause of action.

THE COURT: Where does this take us, Mr. Mandel? What difference does it make?

MR. MANDEL: All right.

THE COURT: Sustained.

Q As the record stands, until this moment, I believe that it indicates erroneously the cost of the litigation to the corporation to this moment, so long as the record is clear that only Finley, Kumble's fees are on record.

MR. SHAW: That is correct, your Honor. There is no basis for any misinterpretation that this shows the total legal fees because the proof has only been with respect to the Finley, Kumble.

MR. MANDEL: That's all right then. I don't have to go further.

THE COURT: Go ahead.

Q Mr. Risher, on Friday, we were talking about the Buckley settlement, and I think that you testified in response to one of my questions that you became aware of the importance of the Buckley settlement in connection with Charles Gross on February 5, 1971, when you saw Mr. Persky hand around Exhibit X at a large meeting, Exhibit X being a form of summons and complaint. Is that correct?

A I think my testimony was that at that point it

registered very strongly in my mind. I had been aware of it before but it registered very strongly in my mind at that time.

Q In fact,you authorized Persky to prepare Exhibit X; isn't that right?

A No, sir.

Q Who authorized Persky to prepare Exhibit X?

A I don't know.

Q As far as you know, nobody authorized Persky to prepare Exhibit X?

MR. SHAW: Objection.

MR. GRUTMAN: Objection.

THE COURT: No, overruled. Do you have any awareness of Exhibit X being authorized?

THE WITNESS: No, I do not.

THE COURT: All right.

Q Mr. Risher, you remember, do you not, that you put an affidavit on the summary judgment motion?

A Yes, sir.

Q And on page 10 of that affidavit -- let me go backwards for a moment -- now Exhibit X was shown by Mr. Persky for the purpose of bringing home to Charles Gross with particularity the nature of the claim against him; is that right? You have heard that before,

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haven't you?

A Yes, sir.

Q All right. Now, in your affidavit which is dated July 5, 1972, on page 10, you said this, and you correct me if I am wrong: "Counsel for the corporation were ultimately authorized to prepare a summons and complaint against Gross & Co. not for the purpose of terrorizing Mr. Gross but to set forth with particularity the basis of at least one of the claims and offsets against him. All during my treatment with Gross and his counsel, it was clear to me that Gross wanted more favorable treatment than anyone else."

Did you put that into your affidavit?

A Yes, sir, and that statement in that affidavit has reference to the actual summons and complaint that was finally served in this matter, and it occurred subsequently to February 11, 1971.

Q Now you say that the actual summons and complaint were authorized to set forth with particularity the basis of at least one of the claims and offsets against Gross? Is that what you are saying now?

A And to begin the action.

Q And to begin the action?

A Yes, sir.

Q The fact of the matter is that the complaint in this matter was never shown to Gross until it was served by a federal marshal; is that correct?

MR. GRUTMAN: That is objected to, your Honor.

THE COURT: On what ground?

MR. GRUTMAN: On the ground that, as Mr. Mandel argues, when you do something as somebody's attorney it is tantamount to knowledge of the client.

THE COURT:No, he is examining.

MR. GRUTMAN: He is attempting to create a false and antithesis, your Honor. The exhibiting of the client --

THE COURT: Mr. Risher has said the complaint was made to show to Gross, in this affidavit, that it was made to show to Gross to show him what the charges were, and Mr. Mandel is inquiring whether or not he said that that's not the one he is talking about, so then Mr. Mandel says the one that he is talking about was not shown to Gross for that purpose but was shown to him in connection with service.

MR. GRUTMAN: I thought it was to demonstrate to Mr. Gross, and if Gross was absent too, by exhibiting it to his counsel is tantamount to the same thing. I hope your Honor doesn't think I am nit picking, but there are

distinctions.

THE COURT: I will permit the question, and you may answer.

THE WITNESS: May I have the question back? I am sorry.

THE COURT: Yes, I will have it read for you.

(Question read.)

THE COURT: Do you know that?

THE WITNESS: I don't know. My problem is with the nomenclature.

THE COURT: All right, go ahead.

Q Did you have any understanding that the complaint would be shown to Gross, and by that I mean the complaint in this action would be shown to Gross before it was served on him, for the purpose of demonstrating something to him?

A My understanding is that Exhibit X was shown to Mr. Persky and through testimony here -- was shown to Mr. Gross, excuse me; and through testimony here I think it has been established that that occurred on February 5th, although that precise date was not in my mind.

After February 11, 1971, an actual summons and complaint was served on Mr. Gross, and this action was done, and it is my belief that the two documents are in general the same.

Q You are not meeting my question, Mr. Risher.

MR. SHAW: Objection, your Honor, I think that we are arguing over nomenclature and the witness is being asked qeustions with respect to a nomenclature that he has shown he is not that familiar with. The word "complaint" is used --

THE COURT: No, I don't think we are doing that. Mr. Mandel has read from an affidavit, am I correct, Mr. Mandel?

MR. MANDEL: Yes.

THE COURT: That a certain instrucment was prepared to show to Mr. Gross, and that it was authorized.

Mr. Risher has testified that Exhibit X was not authorized.

MR. GRUTMAN: He didn't know that it was authorized, your Honor. Qyite a difference.

THE COURT: He said he had no awareness of it being authorized.

MR. GRUTMAN: That is still not a statement that it was an unauthorized act.

THE COURT: He said he had no knowledge that it was authorized.

MR. GRUTMAN: That is true.

THE COURT: IN this affidavit he says that a

certain piece of paper was authorized which means he has an awareness of it being authorized.

MR. GRUTMAN: That is correct.

THE COURT: Then the question is which piece of paper is he talking about, right?

MR. GRUTMAN: Right, Judge.

THE COURT: That is the question we are coming to.

MR. GRUTMAN: Right.

THE COURT: Now let us keep going on that line, which is what you were on.

Q All right,now, Mr. Risher, the actual complaint was not authorized for the purpose of showing to Gross but for starting the action, is that not correct?

MR. GRUTMAN: I object to that as argumentative. It has to be shown to the person upon whom service is made.

THE COURT: No, overruled.

I think we are talking about different things. Overruled.

A It is my brlief that the writing between Exhibit X and what you call the actual complaint, I think I am correct in that terminology, are the same, the writing is the same. They had the same words on them.

Q You are not answering my question, sir.

THE COURT: Well, Mr. Risher, the actual complaint, and in order that we know exactly what we are talking about, there is a piece of paper that is in the form of a complaint which has the partnership in the caption.

THE WITNESS: Right.

THE COURT: That is Exhibit X. There is the complaint in this action that started this action and it is in the name of the corporation. That's what Mr. Mandel has been calling the actual complaint.

THE WITNESS: In the affidavit, the affidavit says the complaint authorized by the corporation, and to me that's only one complaint. That's the one after February 11, 1971.

Q And that's what you were referring to in your affidavit when you said that counsel for the corporation were ultimately authorized to prepare a summons and complaint against Gross & Co. not for the purpose of terrorizing Mr. Gross but to set forth with particularity the basis of at least one of the claims and offsets against him? Is that what you had in mind when you wrote your affidavit?

A Yes, sir; yes, sir. We had a meritorious claim and we asserted it and began the action.

Q How much was paid to Finley, Kumble as a legal fee in connection with the Buckley settlement?

MR. GRUTMAN: Your Honor, I understood earlier that you held that was irrelevant, the only question that you thought was germane was what our incentive might be for compensation that was contingent upon the transfer agreement being consummated. Now we are getting into what Finley, Kumble was paid for this service and that and I don't think that takes us anywhere in the case.

MR. MANDEL: Will your Honor take it subject to connection?

MR. GRUTMAN: I am going to object to that because subject to connection has been so often used and the connection has not been paid.

THE COURT: Let's take this a few questions and see what happens.

MR. GRUTMAN: Very well.

THE WITNESS: In preparing for this trial and going through files, I have come across correspondence that indicates that Finley, Kumble's fees were on a contingent basis of one-third, so they got one-third of $50,000.

Q They did not ask for one-third of the value of the assignment they got from Buckley?

A No, sir.

Q Nothing, no value was attributed to that in paying the contingent fee, right?

A That is correct.

Q They didn't ask for it, you didn't --

MR. GRUTMAN: Objection, your Honor.

MR. SHAW: This is repetitious.

THE COURT: Overruled.

Q They didn't ask for it, you didn't suggest it, the thought never came to anybody's mind.

MR. GRUTMAN: Your Honor, that is argument since everybody knows contingent fees are cash.

MR. MANDEL: You are testifying.

THE COURT:No, overruled.

A Mr. Mandel, the thought did come to my mind, yes, it did, but it was not asked for and it was not given.

Q You have also testified to direct, Mr. Risher, that the action was commenced for the purpose of getting money from Gross on a valid calim; is that correct?

A Yes, sir, Newburger, Loeb lost $200,000. I'd like to recover that money.

Q Newburger, Loeb lost $200,000 because of what?

A Because of churning in the Buckley account, because of errors. If Mr. Buckley had owned General Motors stock and not Westec stock, Newburger, Loeb would never have lost a penny.

Q And Newburger lost part of the money because

the stock was not sold on time, is that correct?

A Yes, sir.

Q And you want Gross to pay for that too and you always did?

A No, sir, when I say $200,000, it comes out X the amount of loss sustained by being late in selling the stock.

Q Buckley's churning claim was only $75,000. You were aware of that, were you not?

A Yes, sir.

Q Yet how much did you ask from Gross & Co. in the instant complaint?

A I am sorry but my mind is unclear on that, and anyway lawyers in their legal fees and some other things to pursue the complaint. I am sorry, I can't answer it off the top of my head.

Q It is many times in excess of 735,000, is it not?

MR. GRUTMAN: No objection.

THE COURT: Let's get it. What is it?

Q About 300,000, right?

MR. GRUTMAN: The document speaks for itself, your Honor.

MR. MANDEL: Not on cross examination.

THE COURT: This is to give the witness a focus on which to go forward.

MR. GRUTMAN: It is 249,000 on the first, second, third and fourth causes of action and $50,000 on the fifth cause of action.

THE COURT: Very good.

Q About 300,000, right?

A Yes, sir.

Q Which is about four times as much as Buckley asked for churning, right?

A Well, it may be, but it's been a real loss to Newburger, Loeb.

THE COURT: No, no, he isjust establishing a figure at this point.

Q And is it your testimony that it is a coincidence that the capital claims of Gross and Bleich and Donoghue together were at least $300,000?

A It is a coincidence.

Q All right, now, you said that at all times up to he present moment you believed in the validity of all of the claims asserted against Gross, and that they were an important asset of the company, and you were pursuing Gross and the other defendants in order to make a recover: is that right?

A Yes, sir.

Q Do you recall sitting in Magistrate Babbitt's courtroom --

MR. SHAW: Objection, your Honor.

THE COURT: Let him finish.

Q -- next to your attorneys when your attorneys --

MR. SHAW: Objection, your Honor. This has been gone into.

THE COURT: Let's get the question.

Mr. Shaw, this is non-jury. Let him finish the question and see what it amounts to.

MR. SHAW: All right.

Q -- when your attorneys Shaw and Alterman stated to Magistrate Babbitt that they had your authority to drop the complaint and all of the counterclaims to counterclaims on the merits and with prejudice?

A They had my authority --

MR. SHAW: Objection, your Honor. That is not the full statement, and this has been gone into and the Court has ruled upon it.

THE COURT: Yes.

MR. SHAW: There was an effort --

THE COURT: Unless you are going to something that is beyond that, Mr. Mandel, I ruled on that with the

jury.

MR. MANDEL: Your Honor, that came in a different way then. I was seeking to put in Mr. Shaw's admission without any statement from Mr. Risher. Now Mr. Risher's testimony has opened the door on cross examination I am entitled to show, I respectfully submit, that despite his statement that he always wanted to recover and he thought they were good claims, he authorized his attorneys to say that they could drop the claims on the merits and with prejudice and allow the counter claims of Gross, Bleich and Donoghue to continue in the bankruptcy court.

MR. SHAW: Where they would be adjudicated and where we could get a discharge, and it is conditional, and it is not an admission of anything, and Mr. Mandel knows this and we have argued it. It would be big sense for a corporation to give up a $300,000 claim to get a discharge of a claim against it in excess of $1 million.

THE COURT: I will sustain the objection.

Q Mr. Risher, you testified on direct about your knowledge and your participation on the night of February 11th concerning Mr. Burak's refusal to give an opinion, and Mr. Persky's giving of an opinion instead in the capacity as special counsel for the partnership. Do you remember that you testified about that?

A Yes, sir.

Q And is my understanding correct that you testified thatyou had only a peripheral relationship to that matter?

A Yes, sir.

Q What do youmean when you say only a peripheral relationship? Do you mean that you hardly knew about it?

A I didn't know much about it.

MR. GRUTMAN: May he finish?

THE COURT: Let him finish, yes.

A Because during the closing I was in a separate room signing documents, and Icame out of that room and I was outside the main room where apparently Mr. Burak made his statement that he would not provide the opinion.

A And I learned that that had occurred, and that Mr. Persky was providing the opinion, and I don't know how I learned either but I became a ware of it because people were talking about it, that it had happened and that Mr. Persky was providing the opinion. So that's what I mean by periferal, literally on the edge of the discussion, outside of the room where the problem of not giving the opinion had occurred.

Q Didn't you have a conference with Persky and Bamberger and Muh and Kayne and was Sloane there that night?

A I don't remember whether Mr. Sloane was there or not.

Q Didn't you have such a conference?

A At the time I gave my depositions I had --

Q I am not asking about your depositions. I am asking about your testimony now. Didn't you say on direct that you had a conference?

A I did, and the reason I did was because I remembered that after that came up in Mr. Persky's testimony here in this courtroom, and where there was a question about attorney-client privilege.

Q Now --

A And I don't know who was in that room other than I remember that I was in the room and I remember that Mr. Persky was in the room and I think that was subsequent to his having written the opinion.

Q Are you telling me now that you want to plead the attorney-client privilege?

MR. SHAW: Objection, your Honor.

A Absolutely not.

Q No, all right.

MR. SHAW: That's not a question.

MR. MANDEL: Now, please, your Honor, I'd like to be able to --

THE COURT: Go ahead, please. Let's go forward.

Q You said on direct that you did have the conference with Bamberger and Persky and Muh and Kayne, is that right?

A I don't think I called it a conference.

Q A private discussion?

A I remember as a result of listening to Mr. Persky's testimony sitting there in Mr. Persky's office and I believe he had written the opinion, and I said are you comfortable with it, is it right, and he said yes.

Q That is what you said on direct, right?

A Yes, sir.

Q Were you here when I read Mr. Bamberger's testimony into the record?

A I assume so. I have no --

Q Did that refresh your recollection a little bit too?

A I was not concentrating as you were reading Mr. Bamberger's --

Q Do you remember that Bamberger testified -- let's go back for a moment. Do you recall that you learned that Burak would not give an opinion and that as a result of that, the closing had come to a halt?

A He testified that I walked out of the room where

I was and people were outside of the main room and that's whatwas being discussed.

Q And the closing had come to a halt because the Rosenman firm would not give an opinion that the transaction was properly authorized under the law; is that correct? That was your testimony, wasn't it?

A May I have the question again? I am not sure I understand the question.

THE COURT: Read it back, please.

(Question read.)

Q I don't know whether the closing was halted or not.

Q I am asking you if you remember your testimony first.

A No, I don't remember the choice of words in the testimony precisely, no.

Q You don't remember saying on Friday that the closing had come to a halt because of the Burak situation?

A I have no recollection of those words. I may have used them, I may not have used them.

Q What is the fact? Wasn't it your understanding that th closing had come to a halt because of the Burak situation?

A Mr. Burak's declining to give the opinion letter

certainly was an important event that night, and somewhat at the point I was talking about it it had come to a halt or whether it had halted and resumed, I don't know.

Q When you learned of it, you learned it was very significant, did you not?

A Yes, sir.

Q It threatened to blow the whole deal, right?

A That seemed to be the sense of it.

Q And as chief officer of the corporation at that closing, you couldn't take that lightly, could you?

A No, sir.

Q It was a very important matter, and you had to get right into the center of it, didn't you?

A No, sir.

Q It was a very important matter and you stayed on the periphery?

A It was a very important matter that seemed to have solved itself and was going forth without my being involved in it.

Q Do you remember Bamberger testifying that at the meeting between you and Persky and himself, that is, testifying in his deposition, that Muh and Kayne, that the Finley, Kumble firm told you there were various alternatives, one of which was to drop the deal. Do you remember

that testimony?

Q Is that in accordance with your testimony or is it opposed to your testimony?

A I do not have a similar recollection. It is just not there in my mind. It is not present.

Q Do you say it did not happen?

A No, sir, I do not say that.

Q You don't know one way or the other?

A That is correct.

Q Were you aware at that closing that Persky was going to give an opinion as special counsel for the partnership even though he was acting at the closing?

MR. GRUTMAN: At what time?

Q --as general counsel?

MR. GRUTMAN: At what time in the closing, your Honor?

THE COURT: Let him finish his question.

Q -- even though he was acting in the closing as counsel to the corporation which was the buyer?

MR. GRUTMAN: I object.

THE COURT: This is after Burak said no, I am sure.

MR. GRUTMAN: That's fine.

THE COURT: Obviously.

A Well, as I heard you phrasing the question, I thought you were going to say was I aware beforehand. The answer to that is no, I was not aware beforehand.

Q Beforehand what?

THE COURT: Later you were?

THE WITNESS: Later I was.

Q Later than that --

THE COURT: Later than Burak saying no?

THE WITNESS: Yes.

Q And before the opinion was distributed, right?

A I am not sure of that, no. I think the opinion will be written and was available for reading by people when I became of it.

Q In other words, you are now saying that to the best of your recollection, your conversation with Persky and Bamberger occurred after Persky wrote and delivered his opinion and the other people accepted it; is that right?

A That's my recollection.

Q And you are saying also that you never authorized Persky to act in that double capacity; is that correct? Is that your testimony?

A I did not authorize him, and -- nor did I withhold authorization.

Q Did Persky ask you for authority to represent the

partnership in this special way as well as representing the corporation?

A No, sir.

It was my understanding from testimony that has occurred here --

Q Never mind your understanding.

MR. GRUTMAN: Let him finish his answer, if your Honor please.

THE COURT: His answer is no, he didn't authorize him.

MR. GRUTMAN: Apart from the basis, could he express his understanding?

THE COURT: Why don't yousave that, as we have done in similar situations. Go ahead.

Q So far as you know, did anybody on behalf of the corporation give Persky authority to act in a double capacity on the night of February 11th?

A As far as I know, no.

Q Before you heard Mr. Burak's position on the night of February 11, you had heard before, at least somebody say that this proposed transaction could not be legally aurhotized without the consent of Bleich and Donoghue, right?

A I heard you say that it could not be legally

authorized without the consent of Gross, Bleich and Donoghue.

Q And that was on January 15th, right?

A Yes sir.

Q And again on February 5th, right?

A Yes, sir.

And now on February 11th the corporation's own attorney, Mr. Burak, was saying the same thing, right?

THE COURT: The partnership's attorney.

Q The partnership's attorney, Burak, was saying the same thing, right?

MR. GRUTMAN: Objection, objection, your Honor. Burak's testimony was simply that he could not give the opinion. It did not go as far as Mr. Mandel implies that it did. When Burak testified here he supported -- I wish to be heard.

THE COURT: Let's not -- we are in cross examination.

MR. GRUTMAN: I understand.

THE COURT: Mr. Grutman, if you want to go into these extended remarks, I will take them at the side bar out of the hearing of the witness.

MR. GRUTMAN: I have stated my objection.

MR. MANDEL: Yes.

THE COURT: Very good.

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Q All right. Now, having heard the objection, Mr. Risher, what is your answer to my question?

MR. GRUTMAN: I object to the form of that question.

THE COURT: No, I will overrule the objection to the original question and we will get an answer to it.

THE WITNESS: May I have the question?

THE COURT: The original question was, wasn't Mr. Burak saying substantially the same thing on the night of February 15th that Mr. Mandel was saying on the 11th, what Mr. Mandel had been saying it earlier? And the answer is either yes or no.

A The answer is I don't know, because you were using legal terms that were unfamiliar to me, and that it was the same thing was not apparent to me. I did not know.

Q And Mr. Persky did not tell you?

A No, sir.

Q And Mr. Bamberger did not tell you?

A No, sir.

Q And when you read the opinion did you see a reference to Section 98 of the partnership law?

A It is there, yes.

THE COURT: Mr. Risher, please.

A I saw a reference to Section 98, yes.

THE COURT: Mr. Risher, let me just ask you so we don't fence around here too much.

You had heard on January 15th and February 5th something about the fact you needed the consent of Bleich and Donoghue to make this deal, right?

THE WITNESS: Yes, sir.

THE COURT: Mr. Burak was saying on the night of the 11th that he wasn't going to give a statement that this deal could go through without their consents; isn't that substantially what he said?

THE WITNESS: Yes, sir.

THE COURT: Those two do have a logical connection with each other, do they not, they speak of the same subject?

THE WITNESS: When Mr. Mandel and I spoke, he also used words of champerty, joint tort feasor, things like that.

THE COURT: All Mr. Mandel is trying to get to, and I hope I am saving time rather than losing it, he is trying to see if when you heard Burak talk, this didn't tickle off the same subject in your mind that he had been talking about earlier in general?

THE WITNESS: I am sorry, I did not make the relationship in my mind.

THE COURT: All right.

THE WITNESS: Logically one might expect it but it didn't happen.

THE COURT: All right. Let us go on.

Q It is also a fact, is it not, that your testimony about what occurred on the night of February 11th give in court here, is very different from your testimony on deposition?

MR. GRUTMAN: Objection.

THE COURT: Yes, sustained.

MR. MANDEL: All right. Does your Honor have a copy of Mr. Risher's deposition?

THE COURT: I do. It is in two volumes?

MR. MANDEL: The second volume.

THE COURT: Totaling 276 pages?

MR. MANDEL: Right, there are really three volumes I think.

THE COURT: A total of 270 something pages?

MR. MANDEL: 321 I think. You must be missing the third volume but we are only using the second at this point.

MR. GRUTMAN: What page, please?

MR. MANDEL: Page 188, and I start at line 9, and I am going to page 197.

Q Now on depositio-, Mr. Risher, did I ask you these

questions and did you give these answers:

"Q Did you ever hear any discussion on February 11, 1971 about an opinion as to the authority of the partnership to sign that agreement?

"A No, sir. Perhaps I had better explain that."

MR. GRUTMAN: "No, sir, I did not."

MR. MANDEL: "No, sir, I did not."

Perhaps I had better explain that. I was out of the room for a large portion of the time of the closing, because I was signing the enormous number of documents that there were.

"Q Were you aware on February 11th, 1971 that Mr. Bureak refused to sign an opinion letter that the partnership was authorized to make the agreement?

"A I became aware after the fact that he had not signed an opinion letter, and that Mr. Persky had submitted an opinion letter.

"Q When did you become aware of it?

"A After the opinion letter had been submitted.

"Q Before or after the agreement was finalized?

"A I really don't understand when the agreement was finalized. There were a large number of documents to be signed and I don't know which one."

MR. MANDEL: Your Honor, can I avoid actually reading all of this material by letting you read it and

by letting Mr. Risher read it and we can deem it in the record.

MR. SHAW: How many pages do you want to read?

MR. GRUTMAN: He said he was going to 191.

MR. MANDEL: 197.

THE COURT: I think --

MR. MANDEL: I should read it into the record?

THE COURT: Yes, read as much as you feel is appropriate.

MR. MANDEL: All right.

"Q When the last paper was signed, assume that the agreement was finalized when the last paper was signed and not before. Let me first ask, was every paper signed on February 11th?

"A Every paper having to do with that transfer agreement, to the best of my knowledge, they were all signed on February 11th.

"Q Did you first become aware of Mr. Burak's refusal to sign an opinion letter before or after the last paper was signed?

"A I think I became aware before the last paper was signed but after the opinion letter had been submitted by Mr. Burak."

THE COURT: That should be Mr. Persky, I as-

sume, right?

MR. MANDEL: Right.

MR. SHAW: Correct.

"Q Did you read the opinion letter?

"A I tried that night to skim all of the documents that there were involved in the closing."

Did you give those answers so far?

A Yes, sir.

Q I will ask you again, did you read the opinion letter that night?

A Same answer. I tried to skim all the documents that were involved in the closing?

Q Now, didn't you testify on direct that you read the opinion letter and asked Persky some questions about it?

A I asked him if he was comfortable with it, was he right?

Q Did you read it?

MR. GRUTMAN: That's the fifth time we have had this, Judge.

MR. MANDEL: Because he says he tried to skim and didn't answer the question specifically.

THE COURT: Overruled. Go ahead.

Q Did you read it? Yes orno, please.

MR. SHAW: At what point?

THE COURT: When it was submitted to him.

A I read it but I did not read it carefully and the significance of it was not nearly so strong then as it is now.

I have read it carefully subsequently but I did not read it carefully then.

Q And it is your testimony that in your conference wtih Persky and Barmberger, and your other corporate associates, that the lawyers did not make the significance of this opinion clear to you?

A It was in the nature of a legal formality to me; and in that night there were an enormous number of legal formalities. Indeed, this one had had an impact on the meeting, but the problem was solved and it was going forward; and the significance that is hear in front of us in court and apparent today was not apparent to me that night.

Q Didn't Persky and Bamberger tell you that one of the alternatives posed by this probem was to drop the deal?

MR.GRUTMAN: We have had this, Judge.

THE COURT: It seems to me we did, but what was the answer, yes or no? Did they tell you?

THE WITNESS: The answer is I don't have that recollection.

THE COURT: All right, I see it here.

Q I am going forward with the questions and answers.

"Q How did you become aware of Mr. Burak's failure or refusal to sign the opinion letter and of the fact that Persky signed an opinion letter?

"A I don't remember."

Did you give that answer?

A Yes, sir.

"Q After you became aware of Burak's failure or refusal to sign an opinion letter, did you discuss it with anybody other than Persky?

"A No, sir."

Did you give that answer?

A Yes, but I was wrong then.

Q That answer was incorrect?

A Yes, sir.

Q In fact you discussed it with Persky, Bamberger, Muh, and Kayne; is that right?

A As a result of Mr. Persky's testimony here, I remember the discussion with Mr. Persky. I did not remember it at the time of that deposition.

Q How about the discussion with Persky, Bamberger, Kayne, and Muh? Do you remember that?

A I think I have testified that I remember the

discussion with Mr. Persky. There were others in the office but I do not recall who else was in the office other than me.

THE COURT: This deposition was what, July of '72? Yes?

MR. GRUTMAN: Yes.

Q The next question was "Q Did you discuss it with Persky", and I am skipping colloquy. I go to page 192.

"Q Did you know and understand that Mr. Persky wrote the opinion letter purporting to act as special counsel for the partnership?

"A I had no understanding of it either."

Did you give that answer?

A That answer doesn't make sense to me. The use of either makes that --

THE COURT: Let's not waste time over this. All right?

MR. MANDEL: All right.

Q Do you recall that on your deposition I attempted to refresh your recollection by showing you a copy of Mr. Persky's opinion letter? Do you recall that?

A Yes, sir.

Q And do you recall that I said to you, and that

you answered,"I have now reviewed the opinion letter, and I think the first paragraph says that he is the special counsel to Newburger, Loeb & Co., and in parenthesis the partnership."

Now, my next question was:

"But my question really is" --

THE COURT: He says that doesn't refresh his recollection, Mr. Mandel. Why do we take time reading it if it doesn't add anything.

MR. MANDEL: All right.

I would like to read in, your Honor, the question and answer beginning on 193, line 21, because I think the answer is meaningful.

THE COURT: Go ahead.

Q "Q Having looked at the document you still do not know whether you were aware on the night of February 11th that Persky wrote an opinion letter acting as special counsel to the partnership, that the partnership was authorized to enter into the transfer agreement?

"A I was aware after the fact that Mr. Persky had written the opinion letter. His role and relationship in preparing that opinion letter were not known to me at that time. I don't remember having discussed or having any understanding at all with regard to that."

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Did you give that answer?

A Yes, sir.

Q Is that still your testimony or is your testimony different today?

A My testimony is different to the extent that I said I recall a discussion with Persky, and I did not recall it at that time. I did as a result of testimony given here by Mr. Persky.

Q "Q Who acted as attorney for the corporation in connection with the execution of the transfer agreement on February 11th?

"A Mr. Robert Persky.

"Q Who is the principal executive officer of the corporation present during the closing? Was that you, Mr. Risher?

"A I guess it would be me but it is probably broader than that. The principal executive officers were myself, Robert Muh, and Fred Kayne, and we were all present.

"Q Who acted as attorney for the partnership at the closing?"

THE COURT: Mr. Mandel, this is all established, isn't it?

MR. MANDEL: All right.

THE COURT: Unless you have some other purpose

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for reading it.

MR. MANDEL: All right.

I now go to page 197, line 4:

Q "Q To the best of your knowledge did anybody give permission or consent on behalf of the corporation on February 11th, 1971 for Mr. Persky to write and sign Exhibit 30 for identification" and you know, do you not, Mr. Risher, that Exhbiit 30 is the opinion letter, right?

A I do now.

THE COURT: The record so shows it.

MR. MANDEL: All right.

Q "A To the best of my knowledge there was bo specific permission granted or withheld.

"Q To the best of your knowledge, did Persky discuss with anybody the question of whether he should write and sign Exhibit 30 for identification and by anybody I mean anybody on behalf of the corporation?

"A I do not know. I was out of the room at that time.

"Q But to this date, has Mr. Muh ever discussed with you what happened while you were out of the room on February 11th in connection with Exhibit 30?

"A Not to my knowledge."

MR. MANDEL: Does your Honor's copy show that

that answer "Not to my knowledge" was stricken and initialed by Mr. Risher?

THE COURT: It does. It reads "No.", that is correct.

Q All right. So do you recall that when you read the deposition over, you struck out your answer that Muh had never discussed with you what happened on February 11th in connection with Exhibit 30. Now, why did you strike out that answer? What is the real fact, Mr. Risher?

MR. GRUTMAN: He said no.

THE COURT: Mr. Risher answer simply if you can. Here is the deposition.

A It just seems -- it seems to say the same thing but it just says it strongly and simply. It says no.

Q Excuse me, it says no. My copy doesn't have that.

A This c-py says no.

Q It may be an error, it may be someone's error in conforming?

A This one says no.

MR. MANDEL: The original says no, your Honor? All right.

Q And then I asked "To this date has Mr. Kayne

ever discussed with you what happened on February 11th in connection with Mr. Persky's dictating and signing Exhibit 30 for identification"?

MR. GRUTMAN: The answer is at line 16 of 190.

"A I don't recollect any discussions on that matter.

"Q With Kayne?

"A With Kayne."

Is that still the best of your present recollection, namely, that neither Kayne nor Muh discussed with you after February 11th anything that happened in connection with the Persky opinion while you were not present.

A That's still my recollection.

Q All right.

In your interrogatories, in answer to interrogatories, sworn to by you on March 31, 1975, I asked you whether you were aware prior to discussion of the transfer agreement that Paul Burak of the law firm Rosenman, Colin, Kaye, Petschek, Freund & Emil, Esqs., acting as attorneys for Newburger, Loeb Co. had refused to issue an opinion letter to the effect that the agreement was lawful and properly authorized: and you answered yes, that I had such awareness, is that correct?

Q Yes, sir.

Q And in interrogatory 27, I asked you this:

"Executing the transfer agreement, did you personally rely on the opinion of any attorney as to the legality thereof? If so, please state the name of such attorney, and state whether opinion you relied on was written or oral and the date thereof."

And your answer was "Robert Persky, oral and written, on and before February 11, 1971 and thereafter."

Now, those answers were given by you before your recollection was refreshed by testimony in this courtroom, is that right?

A Yes, sir.

Q And those answers are factually accurate as of today, are they not?

A Yes, sir. Only adding that Mr. Persky represented me as an officer of the corporation, not as an individual in that transaction.

Q You say Mr. Persky never represented you personally in connection with this transaction?

A Not in connection with this transaction. He never represented me personally.

Q Before the corporation was formed, Mr. Persky acted on behalf of you and Kayne and Muh and the other promoters of the corporation, did he not?

A Before the corporation was formed?

Q Yes. When was the corporation formed?

A December 30, 1971.

Q All right. During December there were negotiations concerning the proposed transaction at which you appeared with Mr. Persky, right?

A Yes, sir, hat is correct.

Q And Persky then was not representing a corporation, right?

A He was representing a corporation that had not yet been formally formed but the intentions were there to form such.

Q In fact,he was representing individuals who intended to go into a transaction and form a corporation vehicle; isn't that right?

A He really was representing us not in any individual sense but in a collective sense, and I don't mean to fence with you but in my mind's eye, he was representing a coproration that was being formed.

Now, I am sure attorneys know much more about what representation means and the nuances there that are lost on me.

Q You consulted with Mr. Persky during December of 1970, did you not?

A Yes, sir, I did.

Q Before the corporation was formed?

THE COURT: Let's get down to a key question like did he have any discussions with Mr. Persky before December the 30th about who would pay him for the work he was doing for the people individually.

THE WITNESS: No, I didn't have.

THE COURT: You had no such discussions at all?

THE WITNESS: No, sir.

THE COURT: Mr. Persky never mentioned about getting paid?

THE WITNESS: No, he did not?

Q He never mentioned anything about disbursements?

A No, sir.

Q And you assumed that Mr. Persky was serving for free?

A I expected tha if this transaction did not go forward, we might have had a discussion about costs that were incurred by Finley, Kumble, but there was never any discussion of it, there was nothing ever said about it. It was just a deduction in my mind.

Q Mr. Persky did mention at least one meeting that

in connection with -- before December 30th, that in connection with the proposed purchase of the assets by the new corporation or group of Risher, Kayne, and Muh, he would represent the buyers, right?

A I don't know that there was ever a meeting that had as part of its content. After, specifically after the December 10th meeting, there was a clear understanding on the part of everyone that Mr. Persky was representing the proposed buyers, and they were forming a corporation.

Q I would like to talk with you a little bit, Mr. Risher, about the so-called in-kind securities, and by that I mean Geon warrants and NATCSS and so forth. Will you understand? Can we talk about the warrants and know what we are talking about?

A If we don't use the term "in-kind". I have never understood what that meant.

Q All right.

Did there ever come a moment when it was brought to your attention that Mr. Gross claimed that he owned some of the Geon warrants that were being held in the partnership name?

A Yes, it ultimately came to my attention.

Q When for the first time did that come to your attention?

A I don't recall.

Q When is the earliest date or approximate date that you can fix when this matter came to your attention?

A I have no time reference. I became aware of it and I don't know when.

Q Did you become aware of it before February 11, 1971, which was the night of the closing?

A I don't know.

Q I show you Defendants' Exhibit XXX for identification, which is a letter from -- XXX is a letter from Kayne to you, is that correct?

A Yes, sir.

Q Dated December 30, 1970.

A Yes, sir.

Q Do you remember what you did when you got that letter?

A I read it.

Q And then what did you do?

A Nothing.

Q Did you talk to anybody about the question raised by Kayne about these warrants?

MR. MANDEL: Does your Honor recall this letter?

THE COURT: No, I was going to say, could you

let me look at that to get me into the flow of the questions.

MR. MANDEL: Yes, please, it is quite important.

(Document handed to the Court.)

THE COURT: Go ahead. Put your next question and I will be reading as you are putting it.

Q After you read triple X, did you talk to anybody about the question of ownership of the warrants raised by Mr. Kayne?

A No, sir. I did not because my sense of the -- and I did not have that letter in my files when I searched them, as you may recall earlier in the trial the letters were --

Q Please answer my question. I move to strike. Answer my question.

THE COURT: Don't worry about it. Just keep going.

THE WITNESS: All right.

A With reference to the letter, my interpretation of the attachment to that letter is that it merely clears up a question of timing as to when one's ownership of those warrants would be determined. My sense of the attachment on that has nothing to do with investigating any more than one can consider each partner had a vested interest in the furniture, fixtures, and so on. In my mind, those

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warrants were then, had always been, property of the partnership, and that that letter was meaningless.

MR. MANDEL: I move to strike on the ground that it is not responsive.

THE COURT: Strike it out.

Q I think my question was did you talk to anybody about it?

A No, sir.

Q Did you talk to Persky?

A No, sir.

Q Did you take possession of any of those warrants, as Mr. Kayne recommended?

A No, sir.

Q Now, in the notice to take your deposition, you were aware, are you not, that you were required to produce all letters, memoranda, financial reports, agreements, and so forth, and other documents pertaining to certain warrants and securities held or formerly held in the name of Newburger, Loeb & Co. for the genefit of the partners and former partners thereof.

Now that appears in the notice of your deposition, does it not?

MR. SHAW: Your Honor, I am going to object to this. There are so many different rulings and agreements

made with respect to discovery, and my recollection is that there was an understanding between Mr. Mandel and other counsel in this case that the documents would ge produced separately; and that there was on-going discovery of documents not in the course of any deposition.

THE COURT: Mr. Shaw, we are not deep enough into this to know what Mr. Mandel is asking this for. That is the problem.

MR. SHAW: It is just that it is misleading to read to the witness something from the notice where it seems to me what actually occurred is more important.

THE COURT: Let's see what the next question is because I don't know which direction it i- going to go from here and I don't think you do either.

Go ahead.

Q Do you recall your notice of deposition?

A I recall having received one. I don't recall the specific requirements of that.

Q The fact is, is it not, Mr. Risher, that you never produced a copy of Exhibit triple X?

A I don't know whether I did or I didn't.

Q You don't?

A I relied on counsel for those items.

THE COURT: No, you have answered. You don't

know whether you did or didn't. Let's go ahead.

Q And the fact is that when triple X was produced in this courtroom, there was a certain amount of consternation and your attorney got up and said --

MR.SHAW: Objection, your Honor.

Q -- objected on your behalf because there was no proof that you ever received the paper.

MR. SHAW: Objection, your Honor.

Q Do you remember that?

MR.SHAW: I stated on the record that the witness indicated he saw the document but it didn't have the schedules annexed to it and it wasn't in the file. I don't know whether that is the other record or not. That is the extent of the consternation.

THE COURT: In any event, what do you draw from that, Mr. Mandel?

MR. MANDEL: Your Honor, what I draw from that is this: Neither Risher nor Persky nor Kayne produced this document. It turned up only because we ultimately got access to Burak's file and I asked the Court to draw an inference that Persky, Kayne and Risher --

THE COURT: You are claiming that there has been a suppression of this instrument by three people, is that what you are claiming?

MR. MANDEL: Suppression, absolutely, your Honor.

MR. SHAW: Your Honor, I object to that statement.

THE COURT: No, Mr. Shaw, you can't object to his statement. It is a legal position he is taking.

MR.SHAW: I would like to state for the record that pursuant to a letter from Mr. Mandel which referred to in-kind securities, Mr. Mandel and an accountant and various other persons were permitted to forage through the records of Newburger, Loeb for at least one day down at 5 Hanover Square. I don't know exactly what they did, and I have no idea where this document came from, whether it turned up in their search of our records or from Mr. Burak; and I object to the statement that's not under oath that's just been made.

THE COURT: All right, that is --

MR. GLATZER: Your Honor, I have an objection on behalf of Mr. Kayne. Mr. Kayne was examined --

THE COURT: There is nothing to object to.

MR. GLATZER: He said Mr. Kayne participated in the suppression of it.

THE COURT: Sir, there is nothing to object to.

Mr. Mandel has made to me a statement of a legal position. He says he claims there is a so-and-so. His claim is either good or it's bad. The facts will either support it or they won't support it. All we are doing is trying now to see whether there is any basis in fact to support this claim. Now let's go ahead.

Q The fact is I were in court and you are aware that triple X, as we have it here, comes from Mr. Burak's file, is that correct, or don't you know about that either?

A I don't know where you got it.

Q All right. I think the record shows that.

MR.SHAW: Objection, your Honor.

THE COURT: Forget it. In any event it didn't come from your file; is that right?

THE WITNESS: No, sir, it did not.

THE COURT: You don't know whether you ever turned over a copy of that to Mr. Mandel pursuant to that notice; is that correct?

THE WITNESS: That is correct.

THE COURT: All right, very good.

Q When you received triple X from Mr. Kayne on December 30th --

MR.GRUTMAN: What year, please?

MR. MANDEL: 1970.

THE COURT: 1970.

Q -- did you note that in the last paragraph he said "I would suggest that you get your hands on these warrants and have them held in the vault at one of our banks"? Did you note that paragraph?

A Yes.

Q Mr. Kayne was not a partner of Newburger, Loeb & Company at that time, was he?

A No.

Q And you were not a partner of Newburger, Loeb & Company at that time?

A That is correct.

Q And as far as you knew, you had no right to take those securities and put them in any vault in one of your banks?

A Mr. Mandel, I was trying to marshall all the assets.

THE COURT: No, no, just answer Mr. Mandel's questions.

A The logical extension of that is I had no right or obligation to attempt to marshall any other asset of Newburger, Loeb and I was clearly attempting to do that.

Q "Our banks" means what, between you and Mr. Kayne? He is not a partner.

MR. GRUTMAN: Now can we have an answer?

Q And you are not a partner?

MR. GRUTMAN: Can we have an answer without the argument?

THE COURT: Yes, let's have an answer.

A And Mr. Kayne had an "our bank" between either of us as individuals.

THE COURT: What did it mean to you?

THE WITNESS: I assumed what it means was a Newburger, Loeb bank.

THE COURT: Partnership bank?

THE WITNESS: Partnership bank.

THE COURT: Presumably it was already in a partnership bank or vault?

MR. GRUTMAN: No, it wasn't.

THE COURT: Let's see what the answer was.

Q Where was it? Where were those warrants when the Kayne letter came to you?

A They were in one of two places, and I am not sure which, and I didn't do anything about it. They were either at that point still at W.E. Hutton, because all of the securities of Newburger,Loeb at one point were transferred to Hutton in the clearing agreement, or by that time they had been returned to Newburger, Loeb, and this process

went on for a period of time; and so where they were on December 30th I don't know but they were either at Hutton or they were in a vault at Newburger, Loeb, or a safe.

Q Did you have access to the Newburger, Loeb safe and vault?

A No, sir.

Q So you couldn't have put them in one of Newburger, Loeb's banks, you'd have had to have somebody else do it?

A Mr. Mandel, I didn't do anything.

THE COURT: Let me see that letter again, please.

(Handing to the Court.)

A I merely ignored the letter. There just didn't seem to me anything needed to be done. They were in a safe place, and that was all that was necessary.

THE COURT: Mr. Risher, let me ask you about this letter.

As you read this, Mr. Kayne acknowledges that there was a vote to distribute the warrants to certain parties.

THE WITNESS: Yes.

THE COURT: I take it that you understood that meant that as of the time of that vote, that the warrants were -- we lawyers use the words "equitable title", but

the warrants really become the property of those partners who had been voted to distribute them. That becomes theirs subject to delivery?

THE WITNESS: No, sir, I don't agree with that.

THE COURT: What does that mean to you?

THE WITNESS: Okay, it means this to me: I can see a very real problem in a partnership that received warrants for having done an underwriting, which is the way these warrants were received, and then at some later date, two or three years hence, those warrants being exercised and sold, and at date one, the partnership would have a particular configuration, and at date two, it would have a different configuration. Perhaps it would have totally different partners or many different partners, so the purpose of the entire exercise, in my opinion, was merely to say that we are determining ownership of these warrants as of the date of the underwriting, not as of the date they are exercised and sold. The same kind of reasoning would apply to all of the assets of the company, securities positions, furniture, fixtures, and so.

THE COURT: Let me just focus your attention on some language. Bob Stern wishes to distribute various warrants to partners. That means to hand them out. That means that in clear and simple English, does it not?

He wants to distribute warrants to partners. Isn't that what it means?

THE WITNESS: That is what Mr. Kayne said, but I don't think that is what Mr. Stern had in mind.

THE COURT: That's what you read?

THE WITNESS: That is what I read.

THE COURT: As a fact, and that is what those words mean to the reader of the English language, that he wants to take certain warrants and give them to partners ?

THE WITNESS: But I believe --

THE COURT: Wait. Isn't that what the language means? As a graduate of college and high school, you studied English. That's what the language means, right? That is what he says he wants to do?

THE WITNESS: I suppose so. I suppose so.

THE COURT: All right. He says this has been voted. I concurred in it, right?

THE WITNESS: Right.

THE COURT: That means that he said at that time that's what we'll do. That's what the language means?

THE WITNESS: Yes.

THE COURT: Now --

THE WITNESS: I don't believe that was what Mr. Stern had in mind. Maybe he will give testimony that

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was what he had in mind but I don't think so.

MR. GRUTMAN: Your Honor --

THE COURT: I am just trying to see what this gentlemen understood.

MR. GRUTMAN: One thing that you should understand is that these warrants were not allocable because they were in large blocks, and so "distribute" is not a sovereign talisman.

THE COURT: I just want to find out what Mr. Risher's understanding of this letter was, so I can better understand what his response to it was and putting it in better perspective.

MR. GRUTMAN: My objection, your Honor, was that while the English language is sometimes deceptively simple, I think there are things in here, given the facts of what the warrants were physically, and what Mr. Risher has told you, that make it logically susceptible of a meaning different from the plain meaning that your Honor is asking the witness about.

THE COURT: Then let me find out.

THE WITNESS: In April 1970, the certified statement of Newburger, Loeb, these warrants are all listed as assets of the partnership. The same certified statement contains other securities as assets, contains

furniture and fixtures as assets, and so on.

THE COURT: But take your August 24th letter. This letter is in effect a recital of what the Executive Committee has done.

THE WITNESS: Right.

THE COURT: And it says that to those partners -- has determined that you therefore own an interest in these securities.

THE WITNESS: Right.

THE COURT: Which means that what we call -- have you ever heard the term "equitable title"?

THE WITNESS: Yes.

THE COURT: All right, so that's what they are talking about, as of that point the partners owned equitable title.

THE WITNESS: But the same letter could have been written about the furniture and fixtures and about the -- other securities.

THE COURT: But it wasn't. We are only talking about this.

THE WITNESS: Those assets don't contain the problem that the warrants do.

THE COURT: Why does Mr. Kayne, if you know -- maybe you don't know, maybe you don't know -- why does

Mr. Kayne want you to get your hands on these warrants? What's the reason that he is --

THE WITNESS: I don't know.

THE COURT: Did you ever ask him? Did you say "Why did you send me this funny letter?"

THE WITNESS: No, I didn't. I just thought he was wrong and ignored it.

THE COURT: All right, go ahead, Mr. Mandel.

Q All right. You formed a legal conclusion of some kind that it was unnecessary for you to do anything about those warrants?

THE COURT: He just formed a conclusion, Mr. Mnadel.

MR. GRUTMAN: Thank you, very much, your Honor.

THE COURT: He says he read it, he ignored it, and that's the end of it.

Q And you didn't talk to Persky to find out --

MR. GRUTMAN: Already answered. He did not.

THE COURT: He didn't do anything.

Q Can you account in any way for the fact that a copy of this letter got into Mr. Burak's files?

A No, sir.

Q At least we have established that by December

30th you were aware of Mr. Gross' claim to in-kind securities, is that right?

A By when?

MR. SHAW: Objection to the use of the words "in-kind securities."

Q December 30th, you were aware of at least some claim that Mr. Gross had with regard to these warrants?

A I am not sure. Does that letter contain claims by -- indication of claims by Gross?

THE COURT: No.

A Then I don't think that letters does it. I don't know when I --

THE COURT: Were you aware irrespective of the letter, is what the question is.

THE WITNESS: No, sir, I was not. I don't remember when I became aware of it.

I recall being surprised that he could make such a contention, but when that occurred I don't know.

Q Do you remember when you were surprised?

A No, I am sorry, but I do not. To me those were just assets like the furniture and fixtures, and they were part of the same transfer agreement as had to do with the furniture, fixtures, and other things.

Q Those warrants were transferred, according to

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your testimony, under the agreement of February 11th, is that correct?

A Yes.

Q From the partnership to the corporation?

A Yes, sir.

Q Rightly or wrongly the corporation took them and treated them as its own, right?

MR. SHAW: Objection, your Honor.

THE COURT: Sustained. It's argumentative.

MR. MANDEL: Which half of it?

THE COURT: Either half.

MR. MANDEL: I would like to establish --

MR. GRUTMAN: We have it that the corporation took them as assets.

THE COURT: The corporation took them as assets.

MR. SHAW: And subsequently sold them or released them.

MR. MANDEL: Now let's establish the price.

Q What profit did the corporation make out of the NCSS warrants?

A $150,000 less the cost of the warrants, which was, I don't know, probably $180, so nearly $150,000.

Q The corporation didn't put up the $180, did it?

A No, sir.

Q The corporation?

A Till we got --

Q The corporation realized the full $150,000 for the NCSS warrants. The corporation also exercised all of the Geon warrants, both the stock and simultaneously sold the stock, is that right?

THE COURT: What is NCSS, Mr. Mandel?

MR. GRUTMAN: National Computer Software.

THE COURT: The name National is omitted on this letter. It is just Computer Software.

THE WITNESS: The name changed.

MR. MANDEL: The name changed subsequently.

THE COURT: You say you realized $150,000 on those warrants?

THE WITNESS: Yes, sir.

What we did was to sell the warrants back to the company, and the company paid us $150,000 to get those warrants returned to them.

THE COURT: When did you do that?

THE COURT: Approximately.

THE WITNESS: Spring of 1973. Best guess.

Q I ask you whether it is not true that the corporation also exercised the Geon warrants, purchased

the stock, and sold the stock simultaneously and realized a profit on the purchase and sale.

A You left out one very important element. We weren't through a registration proceeding.

Q A registration proceeding was necessary before those warrants could be exercised and the stock sold, is that right?

A Yes, sir.

Q When was that registration procedure held?

A Best recollection is late spring, early summer of 1971.

Q Who paid for the registration?

A A condition of the warrants was that Newburger, Loeb, the warrant holder, could on their demand require the company to pay for -- the company being Geon -- to pay for the registration, so Geon --

Q So Geon paid?

A Yes, sir, they did.

Q So that after the registration, the registration did not cut down in any way or the cost of registration did not cut down in any way on the corporation's profit on the transaction, is that right?

A Yes, sir, that's correct.

THE COURT: Could you have registered any part

or did you have to register it all?

A We had a one-time registration and it would have made no sense to register only part.

THE COURT: But you could have? You could have compelled the company to do it?

THE WITNESS: I think so. Those things get written in two different -- in different -- not two -- in different fashions, but I believe those we could have registered a part of.

Q The fact is that the corporation realized a profit of about $263,000 on the sale of the Geon stock it bought pursuant to the warrants?

A I know you have done a careful analysis of that and if you represent that to me, then I will accept it.

Q I have not done it personally. Let me show you some documents.

A Mr. Berkowitz, I believe, did it.

MR. GRUTMAN: Whoever did it could we get the number and go along with the case?

THE COURT: We will accept the number.

Q Is 262,804 the number for the profit now realized by the company on the Geon warrants after the exercise and sale of the stock?

THE COURT: This is what, a simultaneous

transaction of exercise and sale of the stock?

Q Is that correct, Mr. Risher?

A Technically I think simultaneous is not necessary. We both -- we exercised the warrants, bought the stock, we may have held it for a few days and then sold it so it wasn't simultaneous.

THE COURT: For practical purposes we are talking about, was there great fluctuation in the value of the stock during the time you hold it?

THE WITNESS: At that point in time, yes, it was. It was trading as I recall, between 27-28 and $35 a share, which -- that's substantial fluctuation, it seems to me. So Newburger, Loeb had to advance the moneys to make the purchase, held the securities, and then sold the securities off.

THE COURT: Shortly thereafter?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q Newburger, Loeb also had some kind of a first refusal underwriting right with Geon Corporation, is that correct?

A Yes, sir.

Q And the corporation got $60,000 for giving up that right, is that correct?

A Yes, sir.

Q Now I call one thing more to your attention --

A Which the corporation negotiated very, very toughly for, and in fact that may be the largest give-up fee ever negotiated in Wall Street. As far as we can determine it was.

MR. GRUTMAN: Your Honor, I object. I see no relevancy to any claim made by Mr. Gross in this case.

MR. MANDEL: Glad to have that information.

MR. GRUTMAN: With that asset of the partnership for which there isn't even a color of a claim that it was something that was.

THE COURT:Yes. I don't see how that --

MR. MANDEL: At least,your Honor, it is some evidence there were assets around which did not show on the books as having value. We are talking about real values, and Mr. Risher has testified about.

THE COURT: On that ground I can see it there. Whether or not it was a balance sheet item in '70 is another question, and it appears not to be anything that Mr. Gross was arguably deprived of.

MR. MANDEL: As his specific property.

THE COURT: Is that right?

MR. MANDEL: That is right.

Q Do you recall a gentleman named Ben Peyser?

A Yes, sir.

Q Who was he?

A Mr. Peyser.

THE COURT: Shouldn't we take a break at this point?

(Recess.)

THE WITNESS: May I make an addition aboutthe exercise and sale of the Geon warrants?

THE COURT: Sure.

THE WITNESS: 1100 of the Geon warrants were not exercised and sold, and I think the number is 1100 but a small percentage of the total, were not exercised and sold, until approximately the spring of 1972. The bulk of the others were exercised and the underlying stock was sold in the spring of -- spring or summer of 1971, and we had to get a post-effective registration arrangement with the SEC. I think I used those terms correctly but in any event the SEC said we could exercise and sell the last 1100in the spring of '72, the stock.

THE COURT:How much did you sell the 1100 for?

THE WITNESS: Those are included in Mr. Mandel's numbers because I know Mr. Berkowitz had the numbers for that as well from our office, so I am sure that they are in

there.

THE COURT: I see.

Q You mean Mr. Larry Berkowitz, is that it?

A No.

Q A different Mr. Berkowitz?

A Your Mr. Berkowitz.

Q Saul Berkowitz?

A Yes.

Q All right. I was asking you about Ben Peyser. Do you remember who Ben Peyser was?

A Yes, sir.

Q Who was he?

A Mr. Ben Peyser was a former partner of Newburger, Loeb, and was in charge of the syndicate operations of Newburger, Loeb.

Q Mr. Peyer was a 4 percent partner, right?

A I don't know. I don't know what his partnership percentage was.

Q There came a time, did there not, when Mr. Peyser demanded 4 percent of the Geon stock from the corporation, is that correct, for the Geon warrants?

A I have in preparation for this trial learned that a portion of the Geon warrants were sold to Mr. Peyser. That's how I became aware of that.

Q And when was this done?

A I don't remember.

Q Negotiated something with the corporation after it was formed; did he not?

A Mr. Peyser was usually negotiating. He also negotiated one-third of that $60,000 fee that you made reference to earlier.

Q Never mind about that, please, Mr. Risher. Certain of the -- let me show you this document and maybe that will refresh your recollection so that you can answer. I am showing you -- the paepr I am showing you is a computer record of the corporation. Is that right?

A That is correct.

Q And it has reference to Ben Peyser?

A That is correct.

Q Does it not? And what does it show about Ben Peyser?

A It shows 400 Geon industries sold stock to Ben Peyser and there is some entries there that I do not understand.

Q And the date of this transaction was about when?

A The date shown on here is September 28, 1971.

Q All right. So did you negotiate with Ben

Peyser personally about this matter?

A No, I did not.

Q Who did?

A I assume Mr. Berkowitz did because that's whose letter I saw that disclosed the sale of the warrants to Mr. Peyser. Had it been discussed with me I would not have permitted it.

Q But Peyser demanded Geon warrants pursuant to the same distribution letter that you have seen from Stern, is that correct?

MR. SHAW: Objection.

THE COURT: If he knows.

Q If you know.

A I don't know. I have no knowledge of the transaction and had I known I would not have permitted it.

Q You saw a letter from Berkowitz? Where is it?

A I believe that letter from Berkowitz was prepared and sent to Finley, Kumble as part of a request for information that you made to Finley, Kumble. I believe Mr. Berkowitz supplied that information to Finley, Kumble as to the sale of the Geon warrants.

Q To Peyser?

A It was in a list of transactions of the exercise and sale of the Geon and in thatletter was the sale to

Mr. Peyser.

Q Actually was it warrants that were sold to Peyser or shares? Stock, wasn't it, not warrants, because you had exercised the warrants and you sold the underlying stock to Peyser as the exercised price, right or wrong?

A I think that's technically correct.

Q And the reason was that Peyer demanded it as his right under the distribution letter and the report granted it?

MR. GRUTMAN: Objection.

A No.

MR. GRUTMAN: It's referring to Peyser's correspondence or some dealing with the partnership.

THE COURT: If he knows he knows, Mr. Grutman. If he doesn't know,he doesn't know.

MR. GRUTMAN: All right.

A I don't know.

Q Despite all your preparation for this trial, you never took the trouble to find out?

MR. SHAW: Objection, your Honor, that is argumentative.

THE COURT: Sustained.

MR. MANDEL: All right.

Q Now you remember you spoke about the January

15th meeting at my office where, among other things, certain counterclaims were pressed or mentioned by Mr. Persky, and where, among other things, I stated that the transaction could not be lawfully carried out without the consent of all partners; right? Do you recall that January 15th meeting at my office?

A Well, in your language you say counterclaims pressed by Mr. Persky.

Q Or mentioned.

A It was mentioned that if Newburger, Loeb ended up not going through with this transaction, there would probably be an enormous number of lawsuits and I think there would have been an enormous number of lawsuits.

Q Against Mr. Gross?

A Yes.

Q Right?

A By creditors and by limited partners and subordinated lenders of Newburger, Loeb.

Q But Persky never said that you would sue him or Kayne would sue him or the corporation would go through with the deal and the corporation would sue him, did he? That's what your testimony is, Persky was only talking about strangers suing Gross?

A I don't know that they were strangers.

Q But Persky wasn't talking about suits he or you would bring; is that your testimony?

A My earlier testimony was that I did not have a very strong recollection of that discussion. I was a little bit at sea because you refused to look at the balance sheet. I have a quantitative orientation, Mr. Mandel, and to refuse to look at the numbers of a company in as much trouble as Newburger, Loeb was was something I could not comprehend.

MR. MANDEL: I move to strike that as not responsive.

THE COURT: Yes. Strike it out.

Q You do recall that at that meeting I said that the transaction could not be legally carried out without the consent of all partners, right?

A Yes, sir, including Mr. Gross.

Q And including Bleich and Donoghue?

A Yes, sir.

Q Immediately after you left my office, did you and Persky and Muh have a discussion?

A After we left your office, I put a question to Mr. Persky.

Q What was the question?

A I said "Is he right?"

Q And what did Mr. Persky say?

A "No." He also said, "I think it is a complicated matter but no, I don't think he's right."

Q Did Persky tell you then he had done any research on the question?

A No, sir.

Q Did he lead you to believe in any way that he knew I was talking about Section 98 of the partnership law?

A No,sir, and the idea that he disagreed with you was not an important one. It has been my experience that attorneys often disagree about a number of things. That disagreement didn't surprise me. I gave no note to it.

Q Was thereany discussion of the validity of my opinion at the meeting when I was present?

MR. SHAW: January 15th, your Honor?

Q Right, at that meeting.

A I remember a discussion going on that I didn't understand. It wasnot comprehensible to me, and I didn't listen that carefully to it because so much of it was nomenclature I did not understand.

Q I call your attention to Page 99 of your deposition taken on July 10, 1972. I have to go back to

page 98, line 20.

"Q Did anybody tell you tell you that the proposed agreement couldn't legally be made without the consent of Jeanne Donoghue and Mabel Bleich or Charles Gross"?

Skipping colloquy.

"A The answer to your question, someone did advise me that. You told me that.

"Q And Mr. Muh was present when I said that to you in Jnauary?

"A Yes.

"Q And Mr. Persky was present also?

"A Yes, sir.

"Q Was there a discussion of the validity of my opinion at that time when we were all present together?

"A I think in a general way we discussed it.

"Q Can you remember did anybody disagree with me?

"A I think Mr. Persky did."

Now, do those questions and answers refresh your recollection that in fact there was a conversation during that meeting in January at my office about the validity of my opinion and that you understood that this was transpiring and paid attention to it?

MR. GRUTMAN: I object on the ground there is no inconsistency between what the deposition says and what he

has said to your Honor this morning in answer to a line of questions by Mr. Mandel on the same subject.

MR. MANDEL: He just finished saying he discussed it with Persky after the meeting.

MR. GRUTMAN: That is not inconsistent.

THE COURT: You were asked those questions and gave those answers at that time?

THE WITNESS: Yes, I did.

Q You did?

A Yes.

THE COURT: Go ahead.

Q Do you now recall that Mr. Persky disagreed with me during the meeting?

A Yes, and I didn't mean to indicate that he hadn't disagreed with you during the meeting.

Q All right, And after the meeting, you asked him again?

A Yes.

Q To find out if he really meant it?

MR. SHAW: Objection.

THE COURT: Well, go ahead.

Q Will you answer?

THE COURT: Yes, you can answer either yes or no.

Q What was your motive in asking him?

A It just seemed like a rather logical question to put to him, "Were you right?"

Q You had already heard him answer the question to my face. Why did you ask him privately?

A Mr. Mandel, you have asked me a number of questions many times and the same question many times, and I guess I did it in the same sense that you asked me the same question over and over.

Q What is that?

MR. GRUTMAN: Informational. Can we go on, your Honor?

A Information.

MR. SHAW: This is fencing.

Q All right. Now, when you left my office on that day, you and Persky and Muh went right down to a telephone booth in my building, right?

A Until I heard testimony that Mr. Persky had placed a call to Mr. Kayne, I had no recollection of that.

Q Do you now recall it?

A No, I assume that it happened, but I don't recall it.

Q And you can't recall the contents of what Mr. Persky told Kayne on the telephone?

A No, sir.

Q And you don't know whether Sloane was in on that phone call too?

A No,sir.

Q Now on direct examination, you testified,did you not, that the question of forgiveness of a certain portion of what was owed by the general partners was discussed and settled amongst the general partners themselves. Is that right?

A I don't think so.

Q Was that your testimony?

A I don't think so. I think I said that it included limited partners and subordinated lenders as a part of those -- as a part of those meetings and discussions, and that the composition was never -- the composition of the meetings varied, and they took place over a period of -- in a number of instances.

Q So your testimony is that you did not say that on direct that the general partners settled this basically amongst themselves?

A Excuse me, I am sorry, I thought you were referring to something else. On direct, the question came up about how the partners had handled this question of forgiveness, and I said I don'tknow that they did handle

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it; and then I believe Mr. Shaw put to me the question of did they exchange releases between themselves, and I said I think they did; and I don't know whether those releases go to the deficits or not. Presumably, they do, but I don't know whether they do or not. I don't know that that's covered in that.

Q You are aware, are you not, that it is not only the general partners' releasees that would be needed to excuse those deficits but those of the limited partners and the subordinated lenders and the creditors, right?

MR. SHAW: Objection, your Honor, this is an argument of law.

MR. GRUTMAN: It's a legal question.

MR. MANDEL: I am asking him what he is aware of. Time and time again he has testified --

THE COURT: Overruled.

A Since you asked me that question, I read Paragraph 9.4 of the partnership agreement to say that partners are not required to make up their deficits to the extent necessary to repay capital, so I should think the question of deficits would apply only to the extent of creditors and subordinated lenders and not anyone else.

Q I am sorry, I didn't quite understand that.

THE COURT: He answered your question by saying

in effect that the subordinated lenders and limited partners had an interest in this failure to repay.

THE WITNESS: No, sir, I did not say that.

THE COURT: That is what I construed the answer to mean. Let's have it read back.

(Answer read.)

A I specifically excluded from my answer limited partners.

THE COURT: I see. They have no stake in this --

THE WITNESS The partnership agreement says that that is not required to make up deficits to repay capital.

Q Was this your personal interpretation of the agreement?

A No, sir.

THE COURT: Mr. Mandel, where does this take us? Is this in the main road here?

MR. MANDEL: I think so. I will try to push along quite fast on that.

THE COURT: All right.

Q The fact is that Andrew Newburger and other prtners said they would not approve the proposed transfer agreement jnless they got an effective forgiveness of a

large portion of their deficit, is that correct or not?

A Yes.

Q That is correct?

A Yes, sir.

Q And you heard Newburger's testimony to that effect, right, as I read it in my deposition?

A Yes, sir.

Q All right.

Now, in your deposition on July 10, 1972, page 114, begin line 6:

"Q Now getting back to the negotiations concerning the agreement, who negotiatedon behalf of the corporation with the general partners?

"A I suppose in general Mr.Muh and I negotiated on behalf of the corporation.

"Q Do you recall as a facet of the agreement that certain general partners received forgiveness of indebtedness?

"A Yes.

"Q Do you happen to recall any of the numbers?

"A Yes.

"Q Which numbers do you recall?

"A I recall that certain general partners received about a 25 percent, approximately a 25 percent forgiveness

of indebtedness. I recall that partners under $25,000 in indebtedness didn't pay that indebtedness, and I recall that general partners made up their full indebtedness as it stoos on the books as of November 30th.

"Q Some did and some didn't?

"A Yes, sir.

"Q And how did that come about? How did all that come about that way; can you tell me?

"A It was my feeling on the part of the corporation it was the feeling shared by Mr. Muh and others who were aware of our thinking at the time, that we should collect every penny we could possibly get from the general partners in deficit that we could economically get from them. We had tried several times to get them to make up their deficits, and it was pretty discouraging work. Finally, as a process of the negotiations, the general partners decided essentially among themselves to be willing, in order to get the entire transaction forward, that this general partners would relieve other general partners of debts in those amounts."

Did you give those answers to those questions?

A Yes, sir.

Q Beginning in August, or September, you were trying to get assignments from the general partners in order

to guarantee their payments of deficits, right?

A Yes, sir.

Q You didn't tell them that under the agreement they weren't required to make up their deficits, right?

A That is correct. I hadn't read the agreement; if I had --

Q They didn't tell you --

A If I had.

Q -- that under the agremeent they weren't required to make up those deficits?

A If I had been a general partner I would have refused and would have refused based on 94 of the partnership agreement.

MR. MANDEL: I move to strike.

THE COURT: Mr. Risher, just answer Mr. Mandel's question. Strike it out. I am sure the opportunity will come for other byways that you feel appropriate.

MR. GRUTMAN: I hope so.

THE COURT: Let's have the last question.

Q They did't tell you that under the partnership agreement they were not required to make up their deficits?

A No. They just refused to make them up. They didn't tell me their reasons. They just didn't do any-

thing.

Q When it came to the negotiations at the end, you did suceed in getting assignments, right?

A Yes, sir.

Q Assignments of their tax refunds?

A Yes, sir, and I think --

Q To make up part of the deficits, right?

A Yes, sir.

Q You got assignments of about $900,000 of tax refunds?

MR. GRUTMAN: Judge, this ground has been plowed to death. We have been all over this. Mr. Mandel said he was going to move forward.

THE COURT: What new are you going to elicit here?

MR. MANDEL: It's just more conflicts between testimony given by this witness at different times. The forgiveness of indebtedness, your Honor, is an important matter. We content that the forgiveness of indebtedness was an illegal inducement to general partners acting as fiduciaries.

THE COURT: I understand that.

MR. MANDEL: And he testified on direct about it and I am clarifying the testimony.

THE COURT: Let's be sure we are mining valuable material here. Go ahead.

MR. MANDEL: I will try and I am going to move ahead quickly, your Honor.

THE COURT: The forgiveness of indebtedness was one of the demands of certain of the general partners without which they would have not have made the transfer agreement, right?

THE COURT: That's what he said.

Q Right.

THE COURT: He said they would not have approved the corporation unless they got large forgiveness of deficits. That was your question.

MR. MANDEL: Yes.

THE COURT: Go ahead.

Q That is correct, is it not?

THE COURT: Mr. Mandel, he said that. Go ahead.

Q And it is for that reason and that reason only that you agreed to the forgiveness of indebtedness?

A Well, as I have also testified our --

THE COURT: No, was it Mr. Risher for that reason or was it?

MR. GRUTMAN: And that reason only.

THE COURT: No, Mr. Grutman.

Was it forthat reason?

THE WITNESS: What I was agreeing was the size of notes that we would get from the general partners for the corporation. Indeed that related to their deficits. But that remaining residual amount which you call forgiveness, all I did was to get the largest note that we could possibly negotiate for the benefit of the corporation.

Q Now will you answer my question?

MR. MANDEL: I move to strike that as non-responsive.

THE COURT: No, I will let that stand.

Q All right. You agreed that the general partners would not pay back the -- certain general partners would not pay back the full amount of their deficits, right?

MR. SHAW: Shouldn't the word "might" be used there, not "would"?

THE COURT: He said they wouldn't.

A I participated in discussions which -- in negotiations which sought to get notes payable to the corporation, and those notes were related to the deficits; and we got the largest notes we possibly could get.

Q And if you tried to get more, they wouldn't go along with the whole deal so you took what you could

get, right?

A And our leverage in that--

Q Answer my question.

THE COURT: Answer, is that right?

A The answer is we took what we could get, yes, sir.

Q Right and you went ahead with the deal and part of the papers signed at the Finley, Kumble office on the night of February 11th included releases of the general partners from the subordinated lenders and the limited partners, right?

A Yes, from the limited partners. I am not sure about the subordinated lenders.

Q All right.

Now, such releases from subordinated -- rather from limited partners of indebtedness owed by general partners are what you were trying to get from Bleich and Donoghue too, weren't you?

A Yes, and those who decided to give those releases did so believing that that was the economic reality that faced Newburger, Loeb.

MR. MANDEL: I move to strike the answer about what was in their mind.

THE COURT: Strike it out.

Q And the fact of the matter is that if Bleich

and Donoghue had gone along with you they would have lost every penny, right?

MR. SHAW: Objection.

THE COURT: Yes, sustained.

MR. MANDEL:All right.

MR. SHAW: I am going to withdraw that objection. I withdraw that objection.

THE COURT: Will you answer?

A If Bleich and Donoghue's holding out in the transaction had resulted in its stopping, they would have recovered nothing and Mr. Gross in my best belief would be bankrupt.

MR. MANDEL: I mot to strike that answer. It is not responsive in any way to my question. I asked --

MR. SHAW: I think it is a relevant question.

MR. MANDEL: One moment, please. My question was whether Bleich and Donoghue would have lost every penny if they had gone along with the transfer agreement. He has given me a --

THE COURT: Yes, strike that out. Let's get a direct answer to your question.

Q Will you answer my question, please?

A No, sir, the limited partners have received two interest payments in -- and so to that extent they would

not have lost everything.

Q But they would have lost all of their principal and all interest beyond two interest payments?

A If the transaction had not gone forward they would have lost everything.

MR. MANDEL: I move to strike that.

THE COURT: Strike that. Mr. Risher, what you are saying is the limited partners who did go along got two interest payments and nothing else?

MR. SHAW: Plus stock, your Honor, there is testimony to that. There is testimony as to what happened.

THE COURT: But the corporation is now in bankruptcy.

THE WITNESS: That is right, but we have submitted a plan to creditors and are still not entirely without hope.

Q Mr. Risher, there came a time, did there not, when a decision was made not to pay Bleich and Donoghue and not to pay Gross but to sue instead, right?

MR. GRUTMAN: What?

A I don't think the relationship of those decisions is correct in the way you frame the question.

Q Well, let's take it one at a time.

Did there come a time when a decision was made

not to pay Mabel Bleich any portion of her capital but to bring a lawsuit instead?

A And you frame the words again the same way.

THE COURT: Exactly the same way.

Break it up in two pieces, will you, Mr. Risher? There came a time when you decided not to pay Mrs. Donoghue and Miss Bleich, is that right?

THE WITNESS: The first decision was going forward with the suit, the initial part of which was the turning point.

Q When was that decision made?

A When was that?

MR. SHAW: Can't the witness answer?

MR. GRUTMAN: Can't the witness answer without --

MR. MANDEL: Did I interrupt the answer?

MR. SHAW: He was answering the question the Judge has put.

MR. MANDEL: All right, I apologize.

THE WITNESS: And I don't -- the idea of a decision not to pay Gross and Bleich and Donoghue in terms of a time, and a specific identified time, I don't know -- I don't make such a connection. There is no finite idea in my mind of a specific decision not to pay them having been

made. It was my opinion then and now that they were not entitled to anything. Their capital accounts as shown on the books were merely book figures, and they represented nothing.

Q When did you reach that conclusion, before February 11th or after?

A Before February 11th.

Q You went through with the transfer agreement on February 11th intending not to pay Gross, Bleich and Donoghue but to bring action, legal action instead, is that correct?

MR. SHAW: Objection.

THE COURT: No, overruled.

A It has been an open question in my mind then and now as to what they are entitled to. Those entities who decided to go forward with the transaction made it in the realization that to do otherwise, they would get absolutely nothing. Therefore, there is a question in my mind, and always has been, as to what, given this condition of the company, what Mr. Gross, Miss Donoghue, Miss Bleich are entitled to.

The legal action is separate and distinct from that, in my mind, the claims are there, and they have been asserted and they are very real and quite valid.

THE COURT: Mr. Risher, correct me if I am wrong, but my memory seems to be there was a time when there was an announced intention of a willingness to pay one of these two limited partners off. When was this and what was the reason for that proposed payment?

THE WITNESS: The proposed payment to Jeanne Donoghue really sort of arose out of a logistical problem of dealing with Miss Donoghue. She was in Australia. It was just difficult to deal with her and we informed the New York Stock Exchange that if necessary we would pay Miss Donoghue. This was before we became certain of Miss Bleich's intentions. In fact I went into the closing thinking even as late as the closing that there was a possibility that all of Gross, Bleich and Donoghue might go along with the transaction.

But there was an indication in January to the New York Stock Exchange with regard to Jeanne Donoghue's account.

THE COURT: Somebody made a statement that they would pay her?

THE WITNESS: We said if necessary, yes, sir.

MR. GRUTMAN: That is correct.

MR. MANDEL: 75.

MR. GRUTMAN: February 6th I think Persky

recommended it.

Q $75,000?

A Right.

THE COURT: When did you decide not to do that? When did you change your mind about that?

THE WITNESS: I am just wondering about the use of if necessary. The operation in my mind has always been if necessary. I look at this as a pragmatic businessman and at that stage there were no entitlements for the limited partners, and including partially if not all of the subordinated lenders, and if they thought that by not going along with the transaction they could have recovered their money, they would not have gone along with the transactions. That is particularly true with respect to the subordinated lenders. They had a superior claim to any one of general creditors, and clearly had direct access to the general partners; and they went along with this transaction because they were convinced that to do otherwise they would recover nothing.

Given that, and that Mr.Gross was a general partners, and I considered to carry all of the obligations of a general partner, and Misses Bleich and Donoghue were limited partners, and that all three of those persons in my mind had claims certainly inferior to those of the subor-

dianted lenders, there has been then and has always been in my mind a question of what they are entitled to.

To my thinking they are entitled to the same treatment that others in like circumstances received in this transaction, and nothing else.

THE COURT: But if you were willing to pay Mrs. Donoghue, if necessary, $75,000, there must have been some motivation for that.

THE WITNESS: Well, but the motivation was that perhaps I couldn't convince somebody of the soundness of my argument.

THE COURT: Your argument can what?

THE WITNESS: My argument being that all these entities were totally wiped out. If they hadn't been, the subordinated lenders would not have gone along with this transaction. They had no reason to, absolutely no reason to. All they wanted was their money back, and if they thought they could get it through the dissolution of the firm that's exactly what they would have done.

THE COURT: What I am trying to get at is why you were making an unusual distinction in the case of Mrs. Donoghue.

THE WITNESS: Because her reluctance to go along with the transaction had been expressed more clearly and

definitively than Mrs. Bleich had, and we had a logistical problem in dealing with her to persuade her to change her mind or to present facts to her and so on.

THE COURT: All right.

Q Is it a fact that if you had proposed to pay Gross, Bleich and Donoghue in full, nobody else would have gone along with the transfer agreement.

MR. SHAW: Don't you mean proposed and paid?

Q No, proposed to pay Gross, Bleich and Donoghue in full, as part of this transaction, the other parties would not have gone along with the transfer agreement?

A Yes, sir, that is correct.

Q Now, you have been telling Judge Owen that it was a wipeout and presumably you're using certain numbers to figure out that wipeout of limited partners with plus positions. In figuring that wipeout, do you take into account the million and a half owed by deficit partners?

MR. SHAW: Objection, your Honor. There is no testimony that it was owed..

Q The million and a half --

MR. SHAW: There was a deficit but not that it was owed. In fact the acting testimony was to the contrary. According to Mr. Grutman it's not a debt.

Q Do you take into account the deficits of the

general partners?Yes or no?

A Yes, I take it into account.

Q Do you take into account the fact that --

A And I don't believe --

Q -- that almost a million dollars of those deficits were in fact recovered.

MR. GRUTMAN: That is a fallacious proposition, Judge, and if I may be heard, Section 9.4 of the partnership agreement specifically held there was no obligation on the part of general partners to make up the deficits of other general partners. The fact that in the negotiations as it was ultimately structured the partners were deficits who were getting tax refunds were persuaded as part of the overall package to make a transfer over to the new corporation doesn't make it an asset to be considered at the time that Mr. Risher was contemplating that there would have been a wipeout of general partners and withdrawal along with limited partners.

THE COURT: All the question goes to, Mr. Grutman, is whether he took those figures into account. It is not whether they are valid, invalid --

MR. GRUTMAN: But he assumes they were. If you heard Mr. Mandel --

THE COURT: If Mr.Risher doesn't want to

accept that, that's another matter. The question is whether he took that into account.

THE WITNESS: Yes, sir, I took that into account.

Q All right.

Did you also take into account the assets Mr. Grutman described in Arthur Silverman's notes which came to about $800,000 and which you said on direct nobody should have been surprised about because Gutman laid them out at ameeting?

A But Mr. Gutman's -- the testimony -- Mr. Gutman also said that in order to make those recoveries it was necessary for Newburger, Loeb to remain a viable entity, and yes, those wer taken into account, not only by me, but by limited partners and subordinated lenders; and they still believe that there was a wipeout.

MR. MANDEL: I object to his giving their belief. I am aksing questions of Mr. Risher.

THE COURT: Strike out their belief.

MR.MANDEL: Right.

Q Did you take into account, in saying there was a wipeout, the value of the warrants held by Newburger, Loeb & Company?

MR. SHAW: As of what point, your Honor?

MR. MANDEL: As of February 11th or December 30th.

A Yes, sir, I did.

Q Did you takeinto account the good will of Newburger, Loeb & Company which could be sold whether Newburger, Loeb & Company continued in operation or not?

MR. SHAW: Objection, your Honor. That is two parts, and there is no proof that there was good will.

MR. MANDEL: We will come to that.

MR SHAW: And there is no proof that it could be sold.

Q Can you answer that question?

A On the night of February 11thth, it could not have been sold.

Q Mr. Risher, there was good will, wasn't there?

MR. SHAW: That is an accounting concept, I would imagine, rather than just a romantic term.

THE COURT: As a businessman's concept.

A Unfortunately, during that period of time the good will in the brokerage industry was not worth anything.

Q In fact, when Newburger,Loeb& Company, Incorporated,your corporation stopped operating in the brokerage

business, you made a deal with W.E. Hutton & Company to sell the good will, right?

A No.

Q What was your deal with W.E. Hutton & Co.?

A The most imaginative and important part of that deal was to find a way to put W.E. Hutton on the hook for a long peirod of time on a substantial amount of the real estate that had been leased by the partnership and not utilized by the corporation or anyone.

Q The question is what --

A That was not good will.

Q What was your deal with W.E. Hutton let me tell you. You tell me if I am right.

THE COURT: On the good will question?

MR. MANDEL: Yes.

THE COURT: Why don't you zero in on that. Did you have the good will factor in this deal? Is there an item in the transaction involved called good will?

THE WITNESS: No, sir.

Q Are you testifying that the name and respect that -- that the respect and commercial use of the name Newburger, Loeb & Co. was not valuable?

MR. SHAW: As at what point?

Q As of any point.

A It has a value, but the use of that value to provide hard dollars, and certainly the use of that value to provide any hard dollars on the night of February 11th was non-existent, virtually none existent.

Q Mr. Risher, if you had decided a week before February 11th not to go through with the transfer of the agreement, but to liquidate in an orderly way and the New York Stock Exchange would have given another extension, you were aware of that?

MR. GRUTMAN: That's objected to.

Q One moment, please -- if the subordinated lenders and the limited partners agreed to extend the time for withdrawal of their capital?

MR. GRUTMAN: Objected to.

Q The question is were you aware of that?

MR. GRUTMAN: Objected to. The evidence in the case on the documents is no more extensions, final and definitive, February 11th or die.

THE COURT: Maybe there was an exception. Let's ask Mr. Risher.

MR.MANDEL: Mr. Grutman keeps testifying, your Honor, and I object to it.

THE COURT: He's only testified to what the documents and the record presently show.

MR. GRUTMAN: That is what it says.

THE COURT: That doesn't mean that testimony might not vary that and let's see if it does.

A I am not aware of any willingness on the part of the Exchange to grant an extension, and even if they had, that alternative had been considered, attempted, and it just couldn't be done. It just couldn't get done.

Q When was it considered and attempted?

A It was considered and attempted during the fall of 1970.

Q By whom?

A By the partners of Newburger,Loeb.

Q In what way, the alternative of an orderly liquidation?

A No, the alternative of some sort of merger or sale of the salesmen and sales offices to some other firm had been attempted by the partners of Newburger, Loeb and to no avail.

Q Which partners?

A Well, I was not --

Q You don'tknow personally?

A -- deeply involved in that transaction. I know Mr. Robert Newburger attempted to make arrangements with other firms, and I know he was involved.

Q I will ask you now, when your corporation went out of the brokerage business, it was able to make such an arrangement with W.E. Hutton, right or wrong?

MR. SHAW: I don't know what the word such means.

MR. GRUTMAN: Or it.

Q For a sale of the offices to go with the name, to go with a transfer of the employees. Isn't that what you did with W.E. Hutton & Co.?

A There's two substantial differences and probably more if I think about them.

THE COURT: Let's first establish what you did.

Q Is that whatyou did with W.E. Hutton & Co.?

A We made an imaginative arrangement with W.E. Hutton & Co., that is correct.

THE COURT: You sold the offices and the salesmen and what?

THE WITNESS: Actually, I didn't sell them, I rented them to W.E. Hutton.

Q The offices, the salesmen and the name, right? And as part of that transaction, you yourself got a contract?

THE COURT: This is when you went into

Chapter XI?

MR. MANDEL: No. This was before, before they went into Chapter XI.

MR. SHAW: You are confusing Hutton and Evans & Co.

MR. MANDEL: There was a later deal with Evans & Co.

MR. GRUTMAN: Fallacious, and Mr. Mandel knows it.

MR. MANDEL: Please let me go on with this cross examination.

MR. GRUTMAN: Not when it's based on premises that are misleading to the court.

THE COURT: Wait a minute. Mr. Risher says he had a transaction where he rented offices, salesmen, and the name to Hutton. When did this happen?

THE WITNESS: This happened in the summer of 1973 and the arrangements were that in both the Hutton and the Evans case, that they would not undertake the liabilities involved in the Newburger, Loeb offices. They would not go on the leases. They refused to. And the business was operated -- the deals are different but they are common in that the businesses were to operate as the Newburger, Loeb division first of Hutton, and then subsequently of

Evans; and that there was an arrangement to split profits in the case of Hutton after assessment of all costs, and there is an override arrangement in the case of Evans.

In the Hutton arrangement, there was a provision whereby the business could be put back to Newburger, Loeb if it didn't work out as well as planned, and ultimately that did happen in the Hutton arrangement, and in the Evans arrangement there is n such provision.

THE COURT: Let me see if I can't shortcut things here because we are two stages removed from where we started with this inquiry. This has to do with whether there was any value in good will, and you have said that Hutton and Evans under certain circumstances did take the Newburger name, the offices, and the salesmen, and run them as a Newburger operation, so there is some value to good will.

THE WITNESS: Well, but there is also important consideration that in both cases they refused to go on the fixed leasehold liabilities.

THE COURTP All right.

THE WITNESS: And that was an important consideration in the transfer agreement of 1971 in that there was no way to get out from under the enormous fixed obligations. That is what the hammer everyone was living under.

Q Mr. Risher, when you made the Hutton deal,

you also arranged a salary for yourself to run the Newburger, Loeb Division, right?

MR. GRUTMAN: Objection. What relevance is that?

THE COURT: Mr. Mandel, aren't we getting awfully far down the field here?

MR.MANDEL: Because I believe, your Honor, that part of the salary Mr. Risher was getting was attributable to the good will which belonged to the corporation.

THE COURT: Maybe not.

MR. MANDEL: Allright, I will be guided by your Honor on that. All right. I guess I am as tired of this as anybody else is.

THE WITNESS: Maybe I have some good will value.

Q Mr. Risher, I'd like to talk to you about the Rafkind matter. You recall the exchange of letters between Berkowitz and Rafkind?

A I have seen them, yes.

Q You have seen them?

A Yes, sir.

Q When did you first see them?

A Some time after they were written and I don't know when that was.

Q When did you first become aware of anything to do with Mr. Gross and the Rafkind employment opportunity?

A I don't know.

Q You testified on direct, did you not, that at the meeting of February 5th, you made certain remarks about Gross and Rafkind?

A Yes, sir.

Q And therefore, you must have had some information before February 5th about Gross and Rafkind; is that right? Is that a fair conclusion?

A What I testified to was my interpretation of what I -- what my recollection was that those notes had meant that Mr. Silverman had taken. I think they were Mr. Silverman's notes.

Q But you testified as to something you said on February 11th, right?

A Yes, I --

Q About Rafkind?

A Yes, sir.

Q Right.

A Yes, sir.

Q So that -- excuse me -- February 5th, I said February 11th. Now, my question to you is where did you get any information about Rafkind and Gross?

A I don't know.

Q What information did you have on February 5th

about Rafkind and Gross?

A I thought he was going to work for Rafkind.

Q What was the basis for your belief?

A I don't know.

Q Your testimony here is that you twice said Mr. Gross has employment with Rafkind, is working for Rafkind, even though he doesn't have money, is that the substance of your testimony?

A Yes.

Q Do you remember that, or are you extrapolating from Mr. Silverman's notes?

A That's my recollection of that meeting.

Q That's your recollection.

Now, I would like to go over with you, Mr. Risher, the sequence of statements as shown on this exhibit, and you recall, do you not, that I was saying -- I, Philip Mandel, have been saying to the meeting, that Gross needed capital in order to do business; is that correct? Is that your recollection?

A Yes, sir.

Q And you said at one point according to you that Mr. Gross has a job trading with Rafkind.

A Yes, sir.

Q Is that right?

A Yes, sir.

THE COURT: This is February 5th?

MR. MANDEL: February 5th.

Q And the next thing that was said at that meeting was by me, in which I said management made a mistake -- and I am quoting Silverman's notes now -- in sending a letter to Rafkind in response to a letter for clearance.

Do you see that in the notes?

A Yes.

Q Don't you remember that after you made your remark about Gross and Rafkind, I said a very serious mistake had been made by the company because they destroyed a valuable employment opportunity Gross had with Rafkind and Co.?

A Yes, but I thought at that point in time --

THE COURT: All right, the answer is yes.

Q All right. After I said that, did you still think Gross was working for Rafkind?

A Yes, sir.

Q So that you then said in response to my remark that Gross' opportunity had been destroyed you said the point Charles Gross has employment opportunities without capital.

A That is correct, that's in response to your saying that Mr. Gross had to have capital.

Q So you knew --

A And I said that he had an employment opportunity with Rafkind, and he didn't have capital; and so I questioned your position.

Q By then you knew that Gross was not working with Rafkind, and that his employment had been destroyed?

A No, sir.

Q Right?

A No, sir. I thought he was going to work for Rafkind.

Q You didn't hear what I had said.

A I don't know that what you said meant that he wasn't going to work for Rafkind. I thought he was going to work for Rafkind.

Q Didn't you hear me say that his employment had been destroyed?

A I guess I didn't or I didn't understand it but I thought he was going to work for Rafkind.

Q In response to your remark that you said he said he is working for Rafkind, did anybody in the room tell you you were wrong? Did people just swallow that?

MR. GRUTMAN: Your Honor, the question is whether he needed capital, not whether he was going to work for Rakfind.

THE COURT:No, the question is different.

MR. GRUTMAN: Whether he needed the capital.

MR. MANDEL: Mr. Grutman, please.

THE COURT: It's different.

MR. GRUTMAN: I implore you likewise.

A Despite your remarks,Mr. Mandel, I believed then that Mr. Gross was going to work for Rafkind.

Q And you have no idea of the source of that belief?

A Sure I understood he was going to work for Rafkind.

Q From whom did you get that idea?

A I don't know.

Q And you have no idea why nobody corrected your statement?

A Perhaps they all agreed with me, they likewise thought that he was going to work for Rafkind.

(Record read.)

MR. MANDEL: I think this is a good time to stop.

THE COURT: All right. 2 o'clock.

(Luncheon recess.)

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Newburger, Loeb & Co., Inc. et al.

vs

Charles Gross, et al.

New York, New York
July 21, 1975

AFTERNOON SESSION

P A U L D. R I S H E R, resumed the stand and testified further as follows:

THE COURT: Is Mr. Grutman here?

MR. SHAW: I think we should proceed without Mr. Grutman.

THE COURT: Will you protect his interests?

MR. SHAW: Yes.

THE COURT: Go ahead.

MR. MANDEL: Your Honor, there are two technical matters before we proceed. Our notes indicate that XXX which is Kayne's letter, was only admitted in evidence against Mr. Kayne for the reasons I stated this morning. I would now like to move that it be admitted against Mr. Risher and Mr. Persky, and the corporation, and the partnership, and all parties hereto.

MR. SHAW: I'd like to be heard then if we are

going to argue whether we have a conspiracy. I think that --

THE COURT: No, I will admit it against Mr. Risher and I will take it subject to connection against the balance.

MR. SHAW: I would also like to point out that I believe the state of the record now would be sufficient to admit the first page of Exhibit X which I believe contains two documents stapled thereto; and I don't believe there is any testimony with respect to those two documents.

MR.MANDEL: No, no.

MR. SHAW: Am I wrong about that?

THE COURT: Mr. Shaw, the second page is referred to in the first page as being sent with it.

MR. MANDEL: That's right.

THE COURT: Now go ahead.

MR. MANDEL: The second little technical point I have is this:

Exhibit ZZZ is a part of a page from my adversary's brief, your Honor, and with regard to that, I would also like to put into evidence the signatures of the respective attorneys for the respective parties.

THE COURT: These are the preparers of the brief?

MR. MANDEL: Yes, I don't mean manual signatures.

THE COURT: Very good.

MR. SHAW: I object to this on behalf of Mr.

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Grutman and Finley Kumble.

THE COURT: No, it may be received as part of this -- it shows who prepared the page that --

MR. MANDEL: So that we will physically --

MR. SHAW: Can we have the document?

MR. MANDEL: Yes. It is page 153, and what I propose to do is have your -- what I propose to do, with your Honor's permission, is physically attach to the part already in evidence the part respectfully submitted and then the signatures.

THE COURT: Yes, do it that way. That makes good sense. All right.

MR. MANDEL: All right.

CROSS EXAMINATION

BY MR. MANDEL:

Q Mr. Risher, you testified on direct that you paid $10,000 for your shares in the corporation, and that you thought that was too high, you wanted to pay $2,000, and that your shares had a negative book value when bought.

Was that your testimony?

A Yes, sir.

Q Did you intend Judge Owen to understand by that testimony that you thought the value of the shares you bought on February 11th should really be measured by book

value and that it was -- that those shares were substantially worthless?

A I have heard the concept expressed that had we liquidated on February 12th I would have lost the $10,000, and indeed I would have lost the $10,000 on February 12th had we liquidated.

Q That is not answering my question.

MR. SHAW: Objection, your Honor.

THE COURT: That is what he intended me to understand; he would have lost his $10,000 on the next day.

Q The fact is you bought those shares because you regarded them as a valuable economic opportunity?

A I bought those shares, and valued it as such only if we managed to solve an enormous number of problems, only if we were fortunate, and only if we worked very, very hard, and if there was a value, it would be a long time ago.

Q And the company turned out to be a tremendous opportunity, right?

A Based on a lot of output from me and others, yes.

Q A year later, when you and some associates bought Kayne's shares for $400,000, and Muh's shares for $400,000, and the shares of Sloane and Berkowitz at the same per-share price, the discrepancies between book value and the

agreed price was even greater, correct?

A That is correct.

Q And yet you still made those purchases of your own free will based on your own economic judgment; right?

A No, sir.

MR. SHAW: That is a couple of questions in one, your Honor.

THE COURT: Yes, it is. Break it down.

Q All right.

You made those purchases of your own free will, right?

A No, sir.

Q Will you explain that answer? Who coerced you?

MR. SHAW: Objection, your Honor, this is a collateral issue. It is a year later, there is litigation pending between Mr. Risher and various other persons. We are right smack in the middle of an action that involves persons who have no --

THE COURT: Mr. Mandel, it is getting --

MR. SHAW:--meaning here.

THE COURT: -- encrusted with certain things that throw it a little bit off the track. I will sustain that objection.

Mr. Risher, you later bought the shares of others.

THE WITNESS: Yes, sir.

THE COURT: You laid out money to buy those shares?

THE WITNESS: Not my own money.

THE COURT: Did you borrow money at the bank?

THE WITNESS: I borrowed money from a private individual.

THE COURT: Pledged your credit, right?

THE WITNESS: Yes, sir.

THE COURT: How much did you borrow?

THE WITNESS: $570,000.

THE COURT: And how many shares did you buy and from whom?

THE WITNESS: I bought approximately 480,000 shares -- correction, 400,000 shares -- I am still adding -- 540,000 shares, and we paid cash and gave certain additional notes for those shares. Cash outlay was $570,000, and there were notes given for $350,000, a total of $920,000.

THE COURT: And you did this in your business judgment, I take it?

THE WITNESS: No, sir.

THE COURT: Under what circumstances did you make the purchase?

THE WITNESS: I was forced to.

THE COURT: Tell me about that.

THE WITNESS: Okay. I was being asked to step down as president of the company, I think that was preceding what would have been ultimately my dismissal from the company. I had --

THE COURT: You did that to buy control or so that you could stay in?

THE WITNESS: Yes, sir, otherwise I would have been thrown out of the company.

THE COURT: I see. All right.

THE COURT: It was your business judgment then that the alternative to risking being put out of the company was to buy control?

THE WITNESS: That was my very bad business judgment, yes, sir.

THE COURT: I see. All right, go ahead, Mr. Mandel. I think that he has been pretty well --

Q If you had been put out of the company, as you said might have happened, you would not have lost your shares, would you?

MR. SHAW: Objection, your Honor. Haven't we gone far enough on this collateral issue?

THE COURT: Yes, I think this has been pretty well established.

MR. MANDEL: All right.

BY MR. MANDEL:

Q You testified on Thursday night or Thursday afternoon, if I am correct, that thus far you have lost $100,000.

MR. SHAW: No, he said in excess of.

Q Which did you say?

A I said in excess of.

Q And you said that has not been determined yet?

A Yes, sir.

Q And the reason it is not determined as to the exact amount is that there are two litigations pending, one with Muh and one with this lady in Florida?

A Yes.

Q However, does this $100,000 which you say you have lost include your $10,000 original investment?

MR. SHAW: Objection, your Honor.

THE COURT: Why?

MR. SHAW: It has no bearing on this particular case.

MR. MANDEL: Please.

MR. SHAW: To my knowledge,but yet it relates to another lawsuit.

THE COURT: Let's see what the answer is.

A Yes, it would include that.

Q It would include the initial purchase of 10,000 shares and the amount you have lost to date, right?

A Yes.

Q You testified on direct that you wanted Mr. Gross to take the same securities or the same position in the agreement under the transfer agreement as others similarly situated; is that correct?

A Yes.

Q And by that I take it you mean withdrawn partners with positive capital, is that right?

A At that point in time, Mr. Gross was a general partner, and in my --

Q At which point in time?

A At the point in time of late 1970 was a general partner who, if the firm were liquidated, would be bankrupted by the liquidation, in my opinion, unless he had enormous assets that I was not aware of.

I did not think that the mere submission of his resignation in an effort to get out before others could entitle him -- could prevent that bankruptcy from affecting him as well as all other general partners.

Q So that when you said you wanted him to take the same position as all others similarly situated, you

paid no attention to the fact that he was a withdrawn partner?

A I think that Mr. Gross was benefited by that transaction, not harmed by it.

MR. MANDEL: I move to strike.

THE COURT: Strike that out.

Q I ask you to respond to my question.

THE COURT: Strike it out.

Do you want it read back?

THE WITNESS: Yes, please.

THE COURT: Please.

(Question read.)

A I did not believe that the creditors or others would pay any attention to the fact that he was a withdrawn partner.

MR. MANDEL: I move to strike that.

THE COURT: I take it you didn't either, is that right?

THE WITNESS: And I didn't either.

Q Do you know now, as of February 11, 1971, what other withdrawn partners were there with positive capital besides Mr. Gross?

A I think Adolphus Roggenburg was a withdrawn partner with positive capital; and I think his positive

capital may have been even greater than Gross'.

Q That would show in the Peat, Marwick statement, wouldn't it?

A The amount of his capital would. Whether he was withdrawn or not, I don't know whether that would show or not; but the amount of his capital certainly would.

Q Was there anybody else besides Charles Gross -- I mean besides Charles Gross and possibly Adolphus Roggenburg? Do you know for sure about Roggenburg or are you guessing?

A I don't know for certain. I think there are some -- there may be something in the courtroom that indicates that.

Q Will you try to find that later?

A Yes.

Q But go on. Can you think of anybody else besides possibly Roggenburg who was a withdrawn partner with positive capital?

MR. SHAW: General partner.

Q Withdrawn general partner.

A I am unclear as to whether Edward Holt had withdrawn or not. I don't know. And if I look for Mr. Roggenburg I can look for Mr. Holt at the same time.

Q Did Mr. Holt have positive capital on February 11th?

A I believe so, but in an amount --

Q A few thousand dollars?

A Yes, it was a small amount.

Q All right. Now, I think you testified on direct and on cross this morning that you thought the proposed agreement was equitable and that everybody should be required to go along with it, is that right?

MR. GRUTMAN: He didn't say required and I object to the turn of the screw every time, Judge. That is just plain not fair. Mr. Mandel knows what he said and when Mr. Mandel turns the screw I think he does it beyond the pale. He didn't use the word required.

THE COURT: Can you turn the screw beyond a pale, Mr. Grutman?

MR. GRUTMAN: I mixed a metaphor, I'm sorry.

THE WITNESS: Mr. Mandel has been turning the screw a long time now. It gives me difficulty with the question. I will say that the word requires gives me difficulty with the question.

Q You thought it was equitable?

THE COURT: Let's take that as one feature. Equitable.

Q All right, you thought it was equitable that partners who owed money and had a vote should be forgiven

their debt, but a partner,or part of it, but a partner who had withdrawn, had no vote on the transfer agreement, who had positive capital, should be required to give up that capital. That is your idea of equity?

MR. SHAW: Objection, that is argumentative.

THE COURT: Yes, sustained, that is argumentative.

Q I believe it was your testimony on direct that there came a time when there was a struggle between you and Mr. Muh and Mr. Kayne and your group on one hand, and the general partners on the other; is that correct?

A I don't know which -- I don't know -- I don't know the struggle you are referring to.

Q There was a time when the general partners wanted to dismiss you and Mr. Muh from your employment with Newburger, Loeb and get you off the scene and out of the picture, right?

A I guess my problem with your previous question was that you included Mr. Kayne and Mr. Kayne was not included at that point in time.

THE COURT: It did not include Mr. Kayne.

Q That point in time was when?

A Early December, 1970.

Q All right. In early December the partners tried to get rid of you and Muh, and whoever was associated

with you, right?

A Yes.

Q And you and Mr. Persky and Mr. Muh appealed to the limited partners, is that correct, and the subordinated lenders?

A The word appeal is a problem. We told them in candor exactly what had happened.

Q All right. And what happened in effect is that Mr. Steefel, representing the limited partners and some other lawyers representing the subordinated lenders, said that if you were fired by the general partners, they would withdraw their capital immediately and throw the partnership into bankruptcy or liquidation or receivership or whatever else? Is that what happened?

A That is not correct in certain parts.

Q All right.

A And I don't know exactly what was said. The correction is not correct, the assertion is not correct in that you included in there the subordinated lenders. It did not ahppen that way.

In the meeting of December 10th, general partners made a presentation to the limited partners, certain of the general partners did not all, and Mr. Muh and I ultimately left that meeting, were asked to stay, came

back in, the limited partners indicated that in the aggregate the generals were out of money and in deficit and that the limiteds' capital was the one of immediate concern.

Precisely how they exerted that position with the generals I do not know. I don't know whether they said, "We will withdraw our capital," or what. I am not aware of it.

Q You just don't know?

A I don't know.

Q Was it also your testimony that the limited partners and the subordinated lenders knew nothing about the disastrous state of the business until you informed them?

A In the initial meeting with the limited partners in November, they indicated to me that they did not know and had been unaware that the company was in such bad shape. The only statement that I can think of that might have given them any inkling occurred some time previously, and that would have been in April 1970. It would have been a balance sheet, not a profit and loss statement, but they indicated to me that they were not aware of the disastrous situation in the firm.

Q And this was true, you called that meeting in

November, isn't that right?

A Yes, sir.

Q And you were not instructed to call it by any of the general partners, is that right?

A You might say we were instructed to call it by the New York Stock Exchange.

Q I think you testified that it was a shock, the facts that came out were a shock to some of the people at the meeting, is that right?

A Yes, sir.

Q And even though Mr. Kayne succeeded Mr. Gross in August of 1970, the information you are talking about was not given to the limiteds or subordinateds until November of 1970, is that right?

A That is correct.

Q And you did not give such information even though you had been on the scene through September, October, and November; is that right?

A I didn't think I had an obligation to give such information. I gave the information of my thinking to the executive committee of the partnership.

Q Before the meetings in November, you had never met Mr. Steefel, right?

A No, sir.

Q And you had never met Mr. Bialkin?

A No, sir.

Q And you never met Mr. Richenthal?

A No, sir.

Q And you never met Mr. Freund?

A Yes.

Q You had met Mr. Freund?

A Yes.

Q Mr. Freund represented some of the general partners?

A I think so, yes.

Q All right. And you first met the attorneys for the subordinated lenders and the limited partners after you called them to meetings in November; is that correct?

A I met the limited partners, some of the limited partners, I don't know that I met them all at this meeting but I met some of the limited partners at the November 17th meeting. I met with the limited partners again on December 10th and then the next meeting that we have not been able to pin down a date for but that occurred shortly thereafter, included subordinated lenders along with limited partners.

Q And that is when you met their attorneys, specifically Steefel, Bialkin, Richenthal, and some others?

A Well, as we go back, I think I met Steefel and Richenthal on November 17th. I think I met Daniel Eisenberg either then or on December 10th; and I did not meet Mr. Bialkin or the attorneys for subordinated lenders until after December 10th, sometime shortly thereafter.

Q And after you first met these gentlemen, you had numerous meetings with them, right?

A Yes.

Q And when you first met them, they knew nothing about the business of Newburger, Loeb or the state of its affairs, is that correct?

A Yes.

Q And ultimately, you have testified that Mr. Steefel and certain others, including Mr. Richenthal, and maybe Bialkin, came to the conclusion that Charles Gross was responsible for the terrible situation of the company, and that there were numerous litigations that could be brought against him; was that your testimony?

A I don't think that I made that direct connection as a result of these meetings. Those thoughts were expressed in those meetings.

Q Where did those gentlemen get the information that led them to believe that Charles Gross was legally responsible for numerous wrong-doings which led to the

disastrous state of the business? Either you know or you don't know.

MR. SHAW: Objection. Let the witness answer the question, your Honor.

A I think they deduced that from knowing about problems with the basketball team. I think they deduced that from the censure and fine that had been levied against Newburger, Loeb, and that there was a requirement they be made aware of it. I think they deduced that from finding out about the New York Plaza.

Somewhere else in my testimony there has been the question of what partners made accusations against Gross. Mr. Ned Frank did. Mr. Fred Kayne did.

So those are the sources of their thinking that I can -- that come to my mind now.

Q You heard Ned Frank tell Steefel and Richenthal that Charlie Gross did wrong things, right?

A Yes, sir.

Q What did he tell them Charlie Gross did?

MR. SHAW: Your Honor, haven't we been through this? Isn't there a letter that I tried to get into evidence that Mr. Mandel didn't object to and the Court excluded? Are we going to receive all that?

THE COURT: I think Mr. Mandel is going at this

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for an entirely different purpose. I will permit it for some distance here. Go ahead.

What did you hear him tell him?

A I heard him tell about unauthorized trading account.

Q Who did he tell that to?

MR. GRUTMAN: He hasn't finished.

MR. SHAW: The witness is --

Q Excuse me. Had you finished?

MR. GRUTMAN: No, he hadn't.

A I heard Mr. Frank's disclosures on problems with one New York Plaza, an improvident lease there and his comments, combined with the other problems of Newburger, Loeb, the censure and fine and so on, and the fact, just the basic fact that Charles Gross had been the managing partner of the firm during the period of time when all these problems had developed made people very angry at Mr. Gross.

Q Did you hear Ned Frank say anything about the basketball team being the fault of Charles Gross?

A No, I did not, and I specifically excluded that comment from my previous recitation.

Q What did you hear Mr. Kayne tell these gentlemen?

THE COURT: Mr. Mandel, when you get all through with this, where are we at?

MR. MANDEL: This has to do with conspiracy,

your Honor, I want to establish -- Ned Frank's estate is a party. I want to establish what he had to do with what happened. Mr. Kayne is a party. I want to establish what he had to do with what happened. And if Mr. Risher had something to do with giving false information to these lawyers, I want that to be established too, your Honor.

THE COURT: All right.

MR. SHAW: Your Honor, haven't we been through this repeatedly?

MR. MANDEL: No, we have not.

THE COURT: This, no.

MR.MANDEL: This we have not.

THE COURT: We have not.

MR. GLATZER: Is there a time reference, Mr. Mandel?

MR. MANDEL: You will get your chance.

A I don't think that Mr. Kayne met the limited partners and subordinated lenders and counsel therefore until about February 11th or shortly prior to that time. Mr. Kayne had left the New York office by the time the November 17th meeting, or I don't know whether he had or not, but he did not participate at that point.

Q Didn't you say just five or ten minutes ago that Kayne made some of these remarks to Steefel and Bialkin

and Richenthal?

A No. What I said was that my earlier testimony had said that certain general partners had made comments to me and then I said similar comments were made to the limited partners and the subordinated lenders and counsel therefore. Mr. Kayne to my recollection didn't even meet these people until February 11th, I think, although he might have met them a short time prior to that.

Q Did you ever make such statements to any of the limited partners or subordinated lenders or to their counsel?

A No, sir.

Q You never did?

A No, sir.

Q You were aware of the facts, were you not?

A I was aware of what people told me.

Q But you never made such statements personally?

A No, sir.

Q So that the only one you have named who made these statements in your presence is Ned Frank, right?

MR. SHAW: This is prior to February 11th, is it not?

MR. MANDEL: Yes, any time prior to February 11th.

MR. SHAW: And it is the only one of the general

partners, correct?

MR. MANDEL: Please.

Q The only one you have named is Ned Frank, right or wrong?

A Well, he is the only one I have named but it is not my belief that he is the only one who made comments about these problems to limited partners and subordinated lenders and so on. Mr. Freund was counsel for Robert Newburger and Andrew Newburger; and it is my belief that they conveyed similar kinds of comments to him, but I did not hear them say it but I believe they conveyed them.

MR. MANDEL: I move to strike that.

MR. SHAW: Objection, your Honor. I think that is proper if the attorney for Mr. Freund --

THE COURT: Strike it.

MR. SHAW: -- for Mr. Newburger made statements, that is relevant.

THE COURT: Strike it. It is incompetently proved. Strike it out.

Q Fred Kayne is dead, right?

MR. GRUTMAN: No, he is alive.

Q Excuse me. I mean Ned Frank is dead, right?

Excuse me, terrible mistake. Not Freudian.

MR. GRUTMAN: Not much.

Q Ned Frank is dead, right?

A Yes, sir.

Q And when people like Steefel said Charles Gross has done these terrible things in your presence, did you say anything at all?

MR. SHAW: I think the question is did you run to his rescue.

THE COURT: No, did he say anything at all.

MR. SHAW: How can that question be answered, your Honor, unless we have a date, time?

THE COURT: It can be answered yes, I said something, no, I didn't say anything.

A In those meetings occurred, and fortunately we have Mr. Silverman's notes, I said some things, and whether they directly related to Gross or not, look at the notes and find out.

Q How about the numerous meetings you have told about about which we have no reports and at which no representative of Charles Gross or Bleich or Donoghue was present. At those meetings were such remarks made in your presence?

MR. SHAW: About how bad Charles Gross was?

MR. MANDEL: Yes.

A I don't recall.

Q You don't recall?

A No.

MR. MANDEL: Nothing further.

THE COURT: Just a minute. Mr. Risher, do I understand that you were -- I can't be understanding that you were learning for the first time about these problems from Steefel, Freund, Frank, and others.

THE WITNESS: From my point of view at that time, that was nothing that concerned me.

THE COURT: You say you were learning about these problems?

THE WITNESS: Yes, I learned about them. I had been learning about them since August of 1970.

THE COURT: I know but the thing that I think was being aimed at here was that Steefel and Frank only knew second-hand about these things -- Steefel and Freund only knew second-hand about these things as attorneys whereas you and Muh had been working first-hand on these all fall, so if anybody knew about it you and Muh knew about it.

THE WITNESS: My problem with the questions are these:

The person that I can specifically remember making comments is Ned Frank. I am sure other general partners made similar comments to the limited partners.

Many of them were friends, associates of longstanding but I don't have the specific recollection to testify that partner X said to limited partner Y the following about Charles Gross. That is my problem, your Honor.

Mr. Frank is a particularly outspoken gentleman, and he tended to leave an indelible impression, but I am sure that others made similar kinds of statements.

THE COURT: All right. Go ahead.

Anything further?

MR. GRUTMAN: I will be very brief, very brief.

REDIRECT EXAMINATION

BY MR. GRUTMAN:

Q What you were just saying to Judge Owen about the similar kinds of statements concerning the wrong-doing of Mr. Gross, were those things that had been coming to your attention through the fall andup through December and February?

A Yes.

Q Ned Frank --

THE COURT: Wait a minute now. You have to give me something here that has some meat in it.

MR. GRUTMAN: All right.

THE COURT: Similar statements coming to his attention up through the month of February tells me nothing.